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# Local Authority Social Workers' Evidence in Care Proceedings: social work and legal evaluations of professional expertise

Ann Marie O'Brien Potter

A dissertation submitted to the University of Bristol in  
accordance with the requirements for award of the degree of  
Doctor of Philosophy, in the Faculty of Social Sciences & Law,  
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## ABSTRACT

This qualitative, socio-legal study explores evaluations of local authority social workers' evidence and expertise in care proceedings, from social work and legal perspectives. Legal reforms were identified as necessary to reduce the length and cost of care proceedings (MoJ 2011b), including an imperative to reduce the numbers of independent expert witnesses appointed in care proceedings. This placed more importance on the evidence of local authority social workers, leading to attempts by the senior judiciary to re-position social workers as experts in care proceedings (Munby 2013a). However, this appeared to conflict with serious criticism of social workers in high profile judgments such as *Re B-S (Children)* [2013] EWCA Civ 1146. This apparent contradiction provided a focus for the study, to consider how local authority social work expertise is understood and evaluated in contemporary care proceedings. The views and experiences of social workers, lawyers and judges in care proceedings in one family court area were gathered through focus groups, interviews, analysis of written evidence and judgments, and ethnographic observations in a sample of 'live' cases. This enabled consideration of professional practice and experiences, as well as the underlying influences of system and structural changes. A critical realist philosophical framework underpinned the study, involving interpretative, theoretical re-description of the data, through the application of abductive and retroductive analysis. The novel application of Collins and Evans' (2007) theory of expertises within abductive analysis provides a nuanced understanding of the social processes involved in the inter-disciplinary communication and evaluation of expertise in care proceedings. Goffman's (1959) concept of impression management provides supplementary insights for the 'performance' of expertise within a legal process. Findings from the study are relevant for social workers, lawyers and judges in relation to their professional development, and provide insights and suggestions in relation to improved approaches to system review and reform.

## **ACKNOWLEDGEMENTS & DEDICATION**

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I dedicate this work to you all.

## AUTHOR'S DECLARATION

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's *Regulations and Code of Practice for Research Degree Programmes* and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

SIGNED: .....*Ann Potter*..... DATE:.....22/04/2020.....

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## LIST OF ABBREVIATIONS AND ACRONYMS

ADCS	Association of Directors of Children's Services
ASYE	Assessed & Supported Year in Employment
CA 1989	Children Act 1989
CE	Contributory Expertise
CG	Children's Guardian
CJ	Circuit Judge
COS	Charity Organisation Society
DJ	District Judge
FG	Focus group
FH	Final hearing
FPR	Family Procedure Rules
IA	Interactive Ability
IE	Interactional Expertise
IRH	Issues Resolution Hearing
KSS	Knowledge and Skills Statement
LA	Local authority
LASW	Local authority social worker
LPM	Legal Planning Meeting (LA)
LS manager	Legal Services manager (LA)
NAAS	National Assessment and Accreditation Scheme
PCF	Professional Capabilities Framework
PD	Practice Direction
PLO	Public Law Outline
RA	Reflective Ability
SW	Social work
SW manager	Social work manager
SWET	Social work evidence template

# **CHAPTER 1: INTRODUCTION**

This chapter introduces the background to the study, the rationale for the topic, the chosen methodology and study design. The relevance and contribution of the study to socio-legal knowledge in the topic area is highlighted, and the chapter concludes with an outline of the thesis structure.

## **1.1 Background and rationale for the study**

The topic for this study was informed by my professional experience in local authority (LA) child protection social work, as a Children's Guardian (CG) in Cafcass, and my academic interest in socio-legal research including social and inter-professional processes in care proceedings. My original PhD proposal was oriented around issues of judicial 'trust' in relation to LA social work practice in care proceedings, which had emerged as a key theme within the Family Justice Review (MoJ, 2011b). Trust in social workers' professional judgement and concerns about social work expertise were also issues highlighted in the parallel Munro Review of Child Protection (Munro, 2011b). It was clear that the subsequent reform processes arising from these simultaneous yet separate reviews would shape the practice context for legal and social work professionals, including in care proceedings.

The Munro review emphasised the need for the social work profession to move away from overly-proceduralised, inspection-driven approaches to child protection social work practice and decision-making, and recommended social work should 'reclaim' professional expertise (Munro 2011b). Reporting around the same time, the Family

Justice Review highlighted (amongst other things) serious judicial and legal criticisms of social work practice and evidence within care proceedings. ‘Poor’ LA social work evidence was identified as a significant contributing factor in relation to the problem of delay in care proceedings. This was said to be compounded by the ‘over-use’ of independent expert witnesses to compensate for social workers’ inadequacies (MoJ 2011b). As part of the system-wide reform processes that followed the Family Justice Review, the President of the Family Division called for social workers to be ‘re-positioned’ as experts within care proceedings (Munby 2013a). The President considered that judges should rely more readily on the evidence of local authority social workers (LASWs) and CGs wherever appropriate, without instructing additional, independent expert witnesses. This imperative to reduce delay and cost by limiting the numbers of independent experts in care proceedings to situations where this was ‘necessary’ was subsequently formalised in legal changes to court rules and statute. However, at around the same time, the senior judiciary (including the President) were severely critical of LASWs in a number of high profile, cases. These widely disseminated judgements included judicial ‘guidance’, which was prescriptive in relation to how LASWs should conduct their work and present their evidence in care proceedings (*Re B (A Child)* [2013] UKSC 33; *Re B-S (Children)* [2013] EWCA Civ 1146; Masson 2017). This is discussed further in Chapter 2, p.52.

These contradictory judicial messages (on the one hand social workers should be viewed as experts, and on the other they require the judiciary to direct their practice), contrasted with Munro’s (2011b) recommendations to reclaim social work expertise. This signalled some confusion and conflict within and between the reforms flowing from these influential system reviews, with the potential for dissonant perspectives to influence the views, practice and experiences of LASWs, lawyers and judges in care

proceedings. These apparent contradictions between the systems of social work and law led me to consider the role and experiences of LASWs as professional witnesses in care proceedings. Developing my original focus on issues of ‘trust’, I was curious about how LASWs’ professional expertise was understood and evaluated across and between disciplinary boundaries, within an inter-disciplinary process for legal decision-making, in the context of structural and system changes.

## **1.2 Aim of the study and the research questions**

The study aimed to explore and analyse the processes and professional interactions involved in preparing, presenting and evaluating LASW evidence in care proceedings, focussing on social work and legal understandings of professional expertise. It is acknowledged that the aim of the study does not include any focus on the children, young people and family members involved in care proceedings. This is not to ignore the importance of these views, or the profound impact that care proceedings have on families. Such impacts are felt in children’s and parents’ experiences of the processes which may often be traumatic, and the outcomes which are often life-changing (see, for example: Brophy 2006; Broadhurst and Holt 2010; Hunt 2010; Smeeton and Boxall 2011; Broadhurst et al 2015a; Broadhurst et al 2015b; Welbourne et al 2017; Dickens et al 2019). The children, parents and family members involved in care proceedings were very much ‘in mind’ during the development of the study, and in the implementation of the study design. The research questions were developed in the context of legal changes to reduce the numbers of independent experts in care proceedings, arguably increasing the importance of LASWs’ evidence for judicial decision-making. This provided the



primary focus for the study, namely the views and experiences of the social work and legal professionals involved.

From previous practice and research, I was familiar with the literature relating to child protection social work and the family justice system, and research studies relating to processes and practices in care proceedings (discussed in Chapter 2, p.39). Further, focussed exploration of literature and research relating to theories of expertise (discussed in Chapter 3, p.56), assisted in clarifying the aims of the study and the research questions, which then informed the research design and implementation (discussed in Chapter 4, p.95). An overarching research question for the study was developed, based on the background and rationale for the study:

How is Local Authority Social Worker (LASW) evidence evaluated in care proceedings, particularly in relation to expertise?

Three supplementary, focussed research questions were also identified, and were used to shape the study design:

- 1) How is LASW evidence evaluated 'in house', particularly in relation to expertise? *i.e. how is it evaluated by the LASW themselves before and after proceedings, by SW managers 'signing off' evidence, and by LA lawyers scrutinising written evidence before it is filed with the court?*
- 2) How is LASW evidence evaluated 'in proceedings', particularly in relation to expertise? *- i.e. how is evidence evaluated by the parties' legal representatives, by the Judge in their questions to witnesses (if any) and in the judgement?*

- 3) To what extent do evaluations of LASW evidence in care proceedings reflect social and legal perspectives and understandings of expertise in professional practice?

These focussed research questions reflected the aim of the study to investigate how social work expertise is evaluated, throughout the processes of constructing, communicating and evaluating LASW evidence in care proceedings, from both social work and legal perspectives. The chosen methodology and study design that were developed to address the research questions are summarised below.

### **1.3 Chosen methodology and study design**

The research questions required a qualitative, socio-legal approach to the research design, incorporating consideration of the practices and experiences of social workers, lawyers and judges in individual care proceedings cases, as well as structural and system effects on practice, as identified within the background to the study. This requirement for a multi-layered investigation and analysis was based on an acceptance that individual practice can be affected by influences that derive from changing systems and structures, which are experienced as ‘real’ in the everyday practice of social work and legal professionals. This led to the identification of a critical realist approach as an appropriate underpinning research philosophy for the study (see Chapter 4, p.99).

The study was designed to address the three focussed research questions. Phase 1 of the study was designed mainly to provide non-case specific data from relevant social work and legal professionals and the judiciary in the chosen study area. Qualitative methods were chosen, including focus groups and interviews, as well as analysis of LASW

written evidence and observations of meetings and court hearings in two ‘example’ cases, to enable familiarisation with practice in the study area, and inform Phase 2 of the study.

The focus of Phase 1 was the professionals’ experiences of evaluating LASW evidence within care proceedings, and their understanding of social work expertise, including what expertise in a LASW professional witness’ written and oral evidence might ‘look like’. Phase 2 of the study used ethnographic methods, with a sample of ‘live’, contested cases, focussing on the social work, legal and judicial evaluations of the LASW evidence within the final hearings. Methods for Phase 2 included observations of pre- and post-hearing professional discussions, observations of LASW oral evidence and cross-examination, post-hearing interviews with the social workers and lawyers in the cases, and analysis of the LASW written evidence and the judgment in each case.

The approach used in the data analysis reflected the underpinning critical realist research philosophy; this involved preliminary thematic analysis (Boyatzis 1998), and a combination of abductive and retroductive analysis (Alvesson and Sköldbberg). This enabled analysis relating to experiences in the empirical level, as well as analysis of causal mechanisms within systems and structures, influencing individuals’ everyday practices and experiences. Collins and Evans’ (2007) theory of expertises was selected as a suitable theoretical framework for abductive analysis. Their approach understands expertise as a dynamic, social process, enabling the ‘disentangling’ of types of expertise involved in effective communication and evaluation of domain-specific knowledge, within inter-disciplinary processes. The processes involved in LASWs giving oral evidence in contested care proceedings within a courtroom setting led to the identification of Goffman’s theory of presentation of self, and concepts of impression management (Goffman 1959), as a supplementary theoretical framework for abductive

analysis. Retroductive analysis involved consideration of social work and legal system review and reform, influencing evaluations of LASW evidence within care proceedings. This analysis focussed on impacts of changes to the legal framework, the influence of ‘disruptive’ judgments (Masson 2017) on practice, and the influences of ‘standardisation’ and ‘juridification’ on attempted reforms within the family justice system and child protection social work.

#### **1.4 Relevance and contribution to knowledge**

The role of the LASW as a professional witness remains a relevant concern within the family justice system, reflected in the (draft) interim recommendations of the current Ministry of Justice Public Law Working Group (MoJ 2019). Since the study began, there have been increasing numbers of children subject to child protection plans, increasing numbers of children in state care and increasing numbers of care proceedings (Munby 2016; FRG 2018; Thomas 2018). For families and children who are subject to social work and family court intervention in their lives, this represents a worrying and arguably oppressive shift, particularly in the context of research identifying poverty as a key indicator for likely involvement by child protection professionals (Bilson and Martin 2017; Bywaters et al 2018; Featherstone et al 2018). Within this context, understanding how social work practice, as presented in evidence, is evaluated within the family justice system remains important, especially when trying to balance social work values and standards (SWE 2019), support for families in their communities and the challenging requirements of the child protection system.

The study contributes to socio-legal knowledge about LASWs’ evidence in care proceedings, in the context of legal and social work system changes. The novel

application (in a study of care proceedings) of Collins and Evans' (2007) theory, enables an understanding of different expertises involved in communicating and evaluating professional knowledge and opinion across disciplinary boundaries. This provides a more nuanced understanding of the range and types of expertise within social work and legal practice in care proceedings. Goffman's (1959) theory of presentation of self and the concept of impression management, highlight issues of preparation and presentation for professional witnesses. Both approaches can be used to support social work and legal professional development.

The findings from the study indicate specific features of expertise in a professional witness, identified from judicial perspectives, which LASWs, their managers and their legal teams can use to support LASWs' development as 'expert' professional witnesses. The study also emphasises that legal and judicial professional development processes should include improved 'socialisation' in relation to social work knowledge and practice, to inform and support the development of legal and judicial expertise in evaluating knowledge from a non-legal domain (Collins and Evans 2007). At system-level, the study provides a critique of a 'juridification' approach to practice improvement within the family justice system, noting that this reflects the 'standardisation' approach also applied in previous social work system review and reforms (White et al 2009; Broadhurst et al 2010; White et al 2010; Munro 2011b). An awareness of the system-level tendency for juridification, and a more integrated, 'two-way' approach to inter-disciplinary professional development is proposed.

## **1.5 Structure of thesis**

The thesis begins with an overview of the legal framework for care proceedings and a focused review of literature relevant to the research questions, presented over two chapters.

Chapter 2 outlines the relevant legal provisions, and the developing role and status of LASWs as professional witnesses in care proceedings since the Children Act 1989. Care proceedings reviews and reforms over the years are discussed, including attempts to ‘re-position’ LASWs as experts within care proceedings.

Chapter 3 is in two parts. Part one considers social work’s historical and contemporary claims to professional status and expertise. The recommendation from the Munro Review of Child Protection that social work should ‘reclaim’ its professional expertise (Munro 2011b) is considered, along with subsequent social work reforms and reviews of professional practice in care proceedings (FGR 2018). Part two of the chapter focusses on the theoretical frameworks for exploring and understanding the communication, evaluation and ‘performance’ of expertise, as applied in the study. General theories of expertise are outlined, and then the chapter focusses on Collins and Evans’ (2007) theory of expertises and Goffman’s (1959) theory of the presentation of self as appropriate frameworks to be applied in the study.

Chapter 4 provides the methodology for the study, including the underpinning critical realist research philosophy. The development of the research design is explained, along with the required ethical approval, permissions and research governance processes. Methods for data collection and analysis, and issues arising in the implementation of the study design are discussed. The study design is evaluated and limitations of the study are identified.

In Chapter 5, data from Phase 1 of the study are presented. This includes data from interviews with social work and legal managers in the study area, and (separate) focus groups of Children's Guardians (CGs), magistrates, district judges (DJs) and circuit judges (CJs). Also included are researcher observations of the LA and court processes in two 'example' cases, which enabled preliminary data collection relating to social work and legal practices in the study area. Initial thematic analysis of this data identifies themes and sub themes relating to the processes and practices involved in the communication and evaluation of written and oral LASW evidence within the study area, to be explored further in Phase 2. This is followed in Chapter 6 by a summary of the cases that made up the Phase 2 sample, providing an overview of each case and highlighting the main issues in each of the final hearings.

Chapters 7, 8 and 9 present the data and analysis from Phase 2 of the study. Chapter 7 focusses on data relating to the LASWs involved in the sample cases. This includes observations of the LASWs in pre- and post-hearing meetings, during the final hearings, post-hearing interviews with the LASWs and analysis of their final written evidence in each case. Chapter 8 provides data from post-hearing interviews with the lawyers in each of the cases, and Chapter 9 provides analysis of the judicial evaluations of the LASWs, via observations of judicial questions during the hearings and judicial evaluations of the LASW witnesses within the judgments at the end of each case. Initial thematic analysis is discussed, with the identification of themes and sub-themes relation to LASWs' communication and presentation as professional witnesses. Preliminary abductive analysis highlights initial links in the data analysis with Collins and Evans (2007) and Goffman (1959). This is developed further in Chapter 10.

Finally, Chapter 10 provides a discussion of key areas from the analysis across the data chapters. The limitations of the analysis are acknowledged, particularly in relation to

the sample size in Phase 2. The abductive analysis is developed, demonstrating how the theoretical frameworks applied in the study can contribute to an improved understanding of the social processes involved in the communication and evaluation of professional expertise. It is concluded that this can support more informed approaches to social work, legal and judicial professional development. Retroductive analysis of the data is also discussed, highlighting the system and structural influences on legal and social work processes and practices in care proceedings. This enables consideration and critique of current approaches to improving professional practice in care proceedings, and it is concluded that a more integrated, ‘two-way’ understanding between the systems of social work and law is desirable, and would promote more effective inter-disciplinary practice within care proceedings.



## **CHAPTER 2: THE ROLE AND STATUS OF LOCAL AUTHORITY SOCIAL WORKERS WITHIN THE LEGAL FRAMEWORK FOR CARE PROCEEDINGS**

### **2.1 Introduction**

This chapter provides an overview of the legal framework for care proceedings and summarises the processes for evaluating LASW evidence in individual cases. The legal provisions relating to the status of LASWs as professional (as opposed to expert) witnesses in care proceedings are discussed. Thereafter a historical overview of the developing role of LASWs in care proceedings since the implementation of the Children Act 1989 is provided, with reference to the intentions of the legislation and the main principles that were designed to shape and influence the work of LAs and LASWs with families and children. Key system reviews, reports and commentaries are highlighted, to discuss the changing role and expectations of LASWs as professional witnesses in care proceedings over time, with a focus on perceived links between perceptions of social work practice and evidence, the use of ‘expert’ witnesses and the persistent problem of delay. Developments in legislation, practice guidance, and case law affecting LASWs in care proceedings are also discussed, including efforts by the judiciary to re-position LASW witnesses as ‘experts’. Parallel social work reform processes, relating to child protection and addressing social work expertise, are discussed in the next chapter.

## **2.2 LASWs and care proceedings – an overview of the legal framework**

The Children Act 1989 (the Act) gained Royal Assent over 30 years ago. It remains the cornerstone legislation for LA social work with children and their families in England. In relation to the role of LASWs, the Act sets out duties for local authorities to provide support services for children in need and their families (CA1989 s.17), and for the protection of children by the State where there is actual or risk of significant harm, attributable to the care provided by their parents (CA1989 s.47 and s.31(2)). The Act has been frequently amended since its implementation in 1991. Various government reviews including the Lord Chancellor's Scoping Study on Delay in Children Act Cases (LCD 2002); the Victoria Climbié Inquiry (Laming, 2003); the Family Justice Review (MoJ, 2011b); and the Care Crisis Review (FRG, 2018) have considered whether the Act should be replaced, given the length of time since its implementation and the continuing, numerous amendments. However, across the range of inquiries and reviews the consensus has been that the Act provides a sound legislative framework, albeit that interpretation and application of aspects of the legal framework should develop and improve, to reflect contemporary requirements.

A range of accompanying Statutory Guidance supplements the Act. Statutory Guidance is issued under the Local Authority Social Services Act 1970 (s.7), requiring local authorities to adhere to the guidance, unless there are exceptional reasons for not doing so. The relevant Statutory Guidance for child protection and care proceedings includes 'Working Together to Safeguard Children' (DfE 2018a), and 'Court orders and pre-proceedings for local authorities' (DfE 2014b). Working Together (DfE 2018a) provides detail of the roles and responsibilities of LAs, LASWs and other agencies in supporting families and protecting children within their families and communities.

Court orders and pre-proceedings for local authorities (DfE 2014b) provides detailed practice guidance for LASWs involved in private and public family law proceedings.

In addition to the Act and the Statutory Guidance, the legal framework includes procedural rules, such as the Family Procedure Rules (hereafter, FPR 2010). This is delegated legislation, made as a Statutory Instrument (FPR: SI 2010/2955). The FPR 2010 set out the procedures for care and other family proceedings, ensuring the ‘over-riding objective’ of ‘enabling the court to deal with cases justly, having regard to any welfare issues involved’ (FPR 2010, Rule 1.1). These procedures cover the judicial management of cases, including managing evidence and types of witnesses (discussed further below, p.29). The rules are supplemented with Practice Directions, which expand on particular areas of practice and the legal process. Relevant examples include: Practice Directions for case management in care proceedings, including the key stages of the court process and the required content for social work statements of evidence (PD12A, FPR 2010).

Decisions and judgments in cases heard in the Court of Appeal and the Supreme Court form another part of the legal framework for care proceedings. Notable, ‘high profile’ cases such as *Re B* and *Re B-S*, have significant impacts in day-to-day practice in local authorities and the family court, influencing judicial, legal and social work approaches to practice and decision-making in care proceedings (Masson, 2017).

### **2.2.1 Social work and legal processes in individual cases:**

The Children Act 1989 places a duty on LAs to investigate where there is suspicion of significant harm to children by their parents or carers (s.47), and to decide what, if any, further protective action is required. ‘Working Together’ (DfE 2018a) sets out the

multi-agency and social work processes for this, including assessment led by LASWs. These LASW assessments should follow an ecological approach (Horwarth, 2018) based on the child's needs, the parents' capacity to meet the child's needs, and the environmental factors impacting on the family, which may support or hinder parenting capacity. One of the principles underpinning the Children Act 1989 was that every effort should be made to ensure that children could be brought up by their own families, wherever possible (DH, 1989). However if an assessment concludes there are reasonable grounds to believe that the child may be suffering or likely to suffer significant harm, and it is considered contrary to the child's welfare for them to continue to be looked after by their family, then the LA may consider issuing care proceedings under CA 1989, s.31.

For cases before the family court, 'Court orders and pre-proceedings for local authorities' (DfE 2014b) sets out practice guidance for both private and public law aspects of the legal framework for social work with children and families, including when care proceedings are being considered. In such cases, some 'pre-proceedings', time-limited work by the LASW with the family may be agreed, before a care proceedings application is made. This work would aim to divert the matter away from care proceedings, pending a final decision within the LA whether to issue an application or not, informed by the progress of work with the family (DfE 2014b: 51). This approach by local authorities within 'pre-proceedings' was a key aspect of the reform processes that flowed from the Family Justice Review (MoJ 2011b).

If the LA decides to issue care proceedings, an additional legal protocol that is part of the Family Procedure Rules applies, which is The Public Law Outline (PLO) (PD12A, FPR 2010,). The PLO was introduced in 2008 and updated in 2010. A revised PLO was piloted in 2013, in anticipation of forthcoming legal changes, including the

formation of the Single Family Court, and the introduction of a twenty-six week time limit for care proceedings. A final revised PLO was issued in 2014. The PLO sets out the key stages in the court process, and specifies that the applicant LA (other than in exceptional circumstances) will prepare and file their written evidence at the outset of care proceedings. The introduction of this ‘frontloading’ approach to LA evidence, along with improved judicial case management of care proceedings was intended to reduce delay. The effectiveness of these aims in practice have been the subject of various research studies, for example Broadhurst and Holt 2012; Masson and Dickens 2013; Beckett et al 2013; Beckett and Dickens 2018.

The focus of enquiry in this study is social work and legal evaluations of LASW written and oral evidence prior to and during care proceedings. The processes and the stages at which these specific evaluations occur are summarised in Appendices A – D (p.359-362). The tables draw on the social work and legal processes outlined in statutory guidance (Annex A, Pre-proceedings flow chart, DfE 2014(b)) and the PLO (PD12A, FPR 2010), highlighting the key stages for evaluations of the LASW evidence in individual cases. It should be noted that the summary tables reflect the focus of the study, and do not refer to the full range of evidence that may be evaluated by the parties, professionals and the judiciary during care proceedings cases. For example, there is no reference in the tables to evaluations of the evidence of the parent/s or the CG. Whilst this results in a somewhat ‘artificial’ representation of the process within the tables, the aim is to assist the reader by providing a focussed representation of the processes and stages of LASW evidence evaluation prior to and through care proceedings, relevant to this study.

## **2.3 Witness status – an overview of the legal framework**

The status of the LASW as a witness in care proceedings is at the core of this study. As discussed later in this chapter, efforts in 2013 to re-position LASWs as experts within care proceedings were based on the need for the court to rely more readily on LASWs as key witnesses, particularly in the context of reducing numbers of independent court appointed expert witnesses (Munby 2013a). However, attributing expertise to LASW witnesses in care proceedings does not affect the formal status of LASW witnesses under the relevant court rules. The legal framework includes specific provisions relating to the status of witnesses, including who is (and is not) categorised as an expert witness, which it is important to clarify at this stage.

### **2.3.1 Expert evidence and the court's control of expert evidence:**

It has long been recognised that law requires the assistance of 'experts' when deciding issues involving knowledge which is outside the experience of the court (Hand 1901). To understand who counts as an expert witness and what evidence they may be permitted to give, it is necessary to consider what evidence may be 'admissible', and how the law of evidence assists in determining this. The law of evidence is concerned with the nature and type of information required to prove or disprove the particular issue/s before the court and in what circumstances such evidence is admissible or inadmissible. The admissibility of evidence is a judicial decision and depends on particular questions: is the evidence relevant and, in the case of expert evidence, is it reliable? (Munday, 2011)

Relevance is determined by reference to the issue/s to be determined and the potential for the evidence to assist in proving or disproving the issue/s to the required standard.

Lord Simon of Glaisdale provided the following definition:

Evidence is relevant if it is logically probative or disprobative of some matter which requires proof... relevant (i.e. logically probative or disprobative) evidence is evidence which makes the matter which requires proof more or less probable. *DPP v Kilbourne* [1973] AC 729 at 756, HL

All evidence that is relevant is admissible, however admissibility is subject to exclusionary rules of evidence and judicial discretion. The judge applies the exclusionary rules and his or her discretion, for example in relation to hearsay evidence, in determining admissibility. The exclusionary rules of evidence are designed to give the court control over the evidence before it in deciding any issue, and to limit evidence to that which is relevant *and* necessary to the decision. (Keane and McKeown 2012; Dennis 2010)

The Children Act 1989 gives the judge control of assessments of children during care proceedings (s.38(6)-(9)) and provides for the admissibility of hearsay evidence about the upbringing, maintenance or welfare of a child (s.96(3), (4)). In care proceedings there is also judicial management of the amount and type of information that is admitted as evidence, subject to the over-riding objective in the Family Procedure Rules of

...enabling the court to deal with cases justly, having regard to any welfare issues involved. (FPR 2010)

In the Family Procedure Rules 2010, this power to control evidence is set out in Part 22.1:

(1) The court may control the evidence by giving directions as to –

- (a) The issues on which it requires evidence;
  - (b) The nature of the evidence which it requires to decide those issues; and
  - (c) The way in which the evidence is to be placed before the court.
- (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.
- (3) The court may permit a party to adduce evidence, or to seek to rely on a document, in respect of which that party has failed to comply with the requirements of this Part.
- (4) The court may limit cross-examination.

This control of evidence is an important feature of judicial case management that seeks to achieve a fair and timely process whilst also managing the proportionate use of resources in relation to time and consequent costs to the public purse and, where relevant, the parties to the proceedings.

Witness evidence, including testimony, is a crucial aspect in the determination of the issue/s before the court. The rules of evidence provide for ‘ordinary’ witnesses to give evidence based on what they have seen or heard, from direct experience. They are not permitted to provide inferences or conclusions as to the probative value or otherwise of their evidence – this is a matter for the judge in family court cases. The ‘exception to the rule’ is that an expert witness is permitted to give evidence including inference. This has been developed within modern law to define the role of the expert as providing the court with opinion evidence, on a matter that is outside the court’s knowledge and experience, and in which the expert is suitably qualified and experienced. This is



illustrated (albeit in a criminal case) in the Australian case *Bonython*; King CJ in *R v Bonython* [1984] 38 SASR 45 states:

The general rule is that a witness may give evidence only as to matters observed by him. His opinions are not admissible. One of the recognised exceptions to this rule is that which relates to the opinions of an expert. This exception is confined to subjects which are not, or are not wholly, within the knowledge and experience of ordinary persons. On such subjects a witness may be allowed to express opinions if the witness is shown to possess sufficient knowledge or experience in relation to the subject upon which the opinion is sought to render his opinion of assistance to the court. Before allowing a witness to express such opinions, the judge must be satisfied that the witness possesses the necessary qualifications, whether those qualifications be acquired by study or experience or both. But when it is established that the witness is an expert in the relevant field of knowledge, he will be permitted to express his opinion, however unconvincing it might appear to be, subject always, of course, in a criminal trial to the discretion to exclude evidence whose prejudicial effect is disproportionate to its probative value. The weight to be attached to his opinion is a question for the jury.

Thus, in defining an expert witness, the issue of admissibility of opinion evidence (the subject matter being outside the knowledge or experience of ordinary persons and the court) is followed by consideration of reliability (sufficient knowledge and experience being determined by the expert's qualifications or experience in the relevant field). In relation to this second aspect, King CJ goes further in *Bonython* to propose that the judge should also consider:

whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court. (*R v Bonython* [1984] 38 SASR 47)

It follows that a witness with relevant qualifications, knowledge and/or experience in a recognised and accepted professional field, who can bring a reliably informed professional opinion that is relevant to the issue to be determined and that the court cannot provide for itself, could count as an expert witness. However, how is the court to know what constitutes a ‘sufficiently organised or recognised body of knowledge’? Ward (2006) considers how lawyers and judges understand, adopt and use ‘knowledge’ provided in expert testimony (albeit in criminal proceedings), acknowledging the range and types of knowledge that may be considered admissible in expert evidence. He categorises types of expert witness testimony as ‘factual, persuasive or authoritative’ (Ward 2006: 582), acknowledging the potential for dominance of scientific knowledge and expertise in each category, and particularly in ‘authoritative’ testimony, where those evaluating the evidence have limited experience of the area of knowledge and therefore must rely more on ‘trust’ in the expert. Ward’s description of a ‘scientific’ approach to recognising expert testimony as ‘authoritative’ is likely to be limiting in cases where the issues relate to non-scientific expertise, where the body of knowledge is emerging and/or the case requires a predictive opinion (such as issues of risk of future harm or placement options in family cases). As Judge, LJ in *R v Cannings* [2004] 1 All ER 725 states:

Experts in many fields will acknowledge the possibility that later research may undermine the accepted wisdom of today. ‘Never say never’ is a phrase which

we have heard in many different contexts from expert witnesses. That does not normally provide a basis for rejecting the expert evidence, or indeed for conjuring up fanciful doubts about the possible impact of later research.

Since the implementation of the Children Act 1989, expert witnesses have increasingly, been instructed in care proceedings to assist the court with matters in issue (Masson et al 2008). This has ranged from medical evidence about the cause of injuries sustained by children, to psychological evidence assessing ‘parental capacity to change’ and/or predicting the likely long-term impact on siblings of being placed for adoption apart or together (Brophy 2006; Masson et al 2008). The value of evidence from a range of disciplines in care proceedings has been recognised for some time. As Butler-Sloss LJ stated in *Re B (Care: Expert Witnesses)* CA [1996] 1FLR 670:

(the) great success of the Children Act... has been very firmly to establish the tangible benefits of an interdisciplinary approach to this work. The court invariably needs and invariably depends upon the help it receives from experts in the field. The court has no expertise of its own, other than legal expertise.

This extract suggests that the court is wholly dependent on ‘expert’ evidence to determine matters that relate to the welfare of the child – if it has no expertise of its own. Butler-Sloss LJ goes on to clarify that a benefit of an interdisciplinary approach is that knowledge can be shared across disciplines, enabling familiarisation with the knowledge base of other disciplines and thereby a firmer basis on which to evaluate the need for and the quality or otherwise of expert evidence before the court:

Another success of the Children Act has been the training, including and especially the training in related disciplines, which all judges receive. By their strict allocation to this work, they acquire a body of knowledge which, strictly

speaking, cannot be substituted for the evidence received, but which can be deployed to spot any weakness in the expert evidence. That is the judicial task.

The expert advises, but the judge decides. The judge decides on the evidence.

[Butler-Sloss, LJ; *Re B (Care: Expert Witnesses)* CA [1996] 1 FLR 670]

It is clear then that the court relies on interdisciplinary knowledge to make its decisions. Further, it is clear that judicial familiarisation with inter-disciplinary knowledge, through training and experience of hearing cases, is crucial in enabling the legal decision-maker to evaluate the evidence provided by a witness from a discipline other than law. The importance of judges and lawyers in care proceedings becoming ‘acquainted’ with a range of disciplines was a finding in this study and will be discussed later, in relation to Collins and Evans’ (2007) theory of the communication and evaluation of expertise across and between disciplinary boundaries (p.85).

### **2.3.2 Establishing the need for expert evidence and the LASW’s status as a ‘professional’ rather than an ‘expert’ witness:**

As outlined, courts will often require interdisciplinary expertise to assist in legal decision making in care proceedings. The legal framework makes clear that any expert opinion sought should be ‘about a question that is not within the skill and experience of the court’ (PD 25A 1.3(c), FPR 2010). There must also be judicial control of the evidence in any case, in line with the over-riding objective (Rule 1.1, FPR 2010). In other words, it is ultimately a judicial decision as to when and if additional expert evidence is required in a case.

Over many years, there have been conflicting concerns about, on the one hand too few (usually medical) experts available to take on the work in care proceedings within a

reasonable timescale, and on the other too many experts being instructed, resulting in increasing delays and cost to the public purse (Booth 1996; LCD 2002; Masson 2010c; MoJ 2011a). Underpinning the concern about ‘too many’ experts has been an assertion that in some cases (non-medical) experts were being instructed to provide evidence that could or should be available from the existing professional witnesses in the case (the LASW and the CG) (Munby 2013a). This highlights a role for the court in determining not only whether expert evidence will be relevant and reliable, but also whether it is necessary and/or able to be adduced by another means. This is relevant in relation to the development of the role of LASWs in care proceedings over time, and perceptions of the expertise of LASWs within the family justice system. This is discussed further in the next section. Before then, the legal test for determining if expert evidence should be adduced, and the legal distinctions between professional and expert witnesses are outlined, to explain the legal framework relating to the relative status of LASWs and expert witnesses.

The legal test for determining when expert evidence may be adduced was tightened as part of the reforms to the family justice system following the Family Justice Review (MoJ 2011b; Munby 2013a). This was to enable a mandatory reduction in the numbers of independent experts instructed in care proceedings, to be achieved by changing the test for permitting expert evidence from evidence that ‘is reasonably required’ to ‘is necessary’, for the court to resolve the proceedings. Changes were made to the court rules, and the Practice Directions supporting the rules as follows:

The court is under a duty to restrict expert evidence to that which in the opinion of the court **is necessary** to assist the court to resolve the proceedings. The overriding objective in FPR1.1 applies when the court is exercising this duty. (PD25B 5.1, FPR 2010) [emphasis added]

The amendments to the rules and Practice Direction were also reinforced in statute. The Children and Families Act 2014 s.13(6) states, in relation to ‘Control of expert evidence, and of assessments, in children proceedings’:

(6) The court may give permission [to control] only if the court is of the opinion that the expert evidence **is necessary** to assist the court to resolve the proceedings justly. [emphasis added]

These legal changes represented a desire to reduce the number of independent expert witnesses appointed in care proceedings, and also sought to address concerns that some of the evidence requested from independent experts could be acquired from an existing professional witness in the case, namely the LASW (and/or the CG) (MoJ 2011b). This highlights that debates and legal developments in relation to the use (and potential over-use) of expert evidence are, at least in part, linked with perceptions of LASWs’ evidence in care proceedings.

So, what is the distinction between a professional and an expert witness within the legal framework, and how might this relate to the role and status of LASWs (relative to other witnesses) in care proceedings? In practice, proceedings will always involve evidence from LASWs employed by the applicant LA, and the Children’s Guardian (also a social work professional) employed by Cafcass. The LASW is the named professional witness for the applicant LA throughout the proceedings. The Children’s Guardian is also party to the proceedings and a professional witness, on behalf of the child. As such, there are always at least two professional, social work witnesses in care proceedings.

Independent, expert witnesses may be appointed, depending on the case.

A definition of ‘expert’ is provided in the court rules, highlighting that certain professionals are not categorised as ‘expert’ witnesses:

The meaning of ‘expert’:

2.1 In accordance with FPR 25.2(1), ‘expert’ means a person who provides expert evidence for use in family proceedings. Section 13(8) of the 2014 Act expressly refers to evidence that is not expert evidence. For example, evidence given by a children's guardian is not expert evidence. (PD25B, FPR 2010)

Of significance to this discussion is that the court rules require the parties and the court to consider:

4.3(h)... why the expert evidence proposed cannot be given by social services (sic) undertaking a core assessment, or by the Children’s Guardian in accordance with their respective statutory duties. (PD 25A, FPR 2010).

The Children and Families Act 2014 s.13(8) further clarifies that the LASW (involved with the case as a representative of the applicant LA), and/or the CG (an officer of the Service) are not categorised as expert witnesses:

References in this section to providing expert evidence, or to putting expert evidence before a court, do not include references to—

(a) the provision or giving of evidence—

(i) by a person who is a member of the staff of a local authority or of an authorised applicant,

(ii) in proceedings to which the authority or authorised applicant is a party, and

(iii) in the course of the person’s work for the authority or authorised applicant,

(b) the provision or giving of evidence—

(i) by a person within a description prescribed for the purposes of subsection (1) of section 94 of the Adoption and Children Act 2002 (suitability for adoption etc.), and

(ii) about the matters mentioned in that subsection,

(c) the provision or giving of evidence by an officer of the Children and Family Court Advisory and Support Service when acting in that capacity, or

(d) the provision or giving of evidence by a Welsh family proceedings officer (as defined by section 35(4) of the Children Act 2004) when acting in that capacity.

Thus, a distinction between professional (LASW and Children's Guardian) and expert witnesses in care proceedings is set out in the legal framework. The basis for this legal distinction can be explained by the need for control of evidence by the court, and the fact that the LA and Cafcass have party status within care proceedings. Dealing first with the control of evidence, the court has a duty to restrict expert evidence to the particular issue identified in the case, for which an opinion is required (PD25B 5.1, FPR 2010). Within the legal framework, a witness categorised as an 'expert' should only be instructed where there is a requirement for particular opinion evidence in their area of expertise, and they must confine themselves to providing evidence only in response to the particular questions asked of them in their letter of instruction. It is clear that these controls of and restrictions on evidence could not apply to LASWs (and CGs) in care proceedings. The LASW is the representative of the applicant LA in care proceedings and as such their evidence must put the overall 'case' for the LA before the court, including evidence to support their interim and final recommendations and care plans



for the child/ren. It follows that LASWs (and CGs) are excluded from the expert witness provisions within the legal framework. However, it may be that this necessary legal distinction has had an unintended consequence of implying a ‘hierarchy’ of expertise within care proceedings, which may have contributed to perceptions of LASWs’ evidence as less than ‘expert’.

The next section considers how the role of LASWs in care proceedings has developed over time. An overview of reviews and reform processes is provided, along with an exploration of views about and within the social work profession, including generalised concerns about social work expertise and consequent ‘de-skilling’ of social workers within care proceedings. The focus is on how these issues and developments may have contributed to the over-use of independent experts and delay, resulting in the senior judiciary seeking to ‘re-position’ LASWs as witnesses with expertise, with the aim of reducing delay and costs (Munby 2013a).

## **2.4 The developing role, status and perceptions of LASWs in care proceedings: review, reform and the problem of delay**

### **2.4.1 The intentions of the Children Act 1989 in relation to child protection and care proceedings:**

It is generally acknowledged that the development of the Children Act 1989 was influenced (at least in part) by social and political concerns about LASW child protection practice. Amongst a range of public inquiries into child protection practice, the Jasmine Beckford Inquiry Report (Brent Borough Council 1985) criticised social workers for not intervening, and the Cleveland Inquiry Report (Butler-Sloss D. 1988) criticised social workers’ practice when they did intervene. Consequently, one of the

aims of the Act was to ‘rebalance’ the relationship between LASWs (as agents of the state), children and their parents (DH, 1993). The Act introduced duties and powers for LASW child protection intervention with families, for example s.47 to investigate significant harm and s.31 to apply to the court for a care order granting parental responsibility (PR) to the LA. There were also provisions within the Act that aimed to ensure that LAs had duties to provide preventive services, designed to support children to be cared for by their families (s.17) and to divert families away from care proceedings (Sch. 2 Pt. I para. 7). If care proceedings were used, the Act sought to ensure that the court only made orders granting PR to LAs when it was better than not doing so, for the child/ren (s.1(5)). There was a clear expectation, reflected within a range of practice guidance accompanying the Act, that LASWs should work in ‘partnership’ with parents, including in child protection cases (DH 1995). These messages about how the state, children and parents should interact with each other (particularly in relation to child protection) required shifts in established practice within LAs, across a range of welfare and health disciplines, and in the courts (DH 1993). To support these changes, between the Children Act 1989 receiving royal assent on 16<sup>th</sup> November 1989 and its implementation on 14th October 1991, a national training and awareness programme was rolled out, which included focussed training for LASWs (and LA lawyers), to prepare for the forthcoming changes in law and practice (DH 1993; Jones 2010). This recognition of the need for comprehensive training, reflected the key role envisaged for LASWs in the implementation of the reformed child protection processes, involving, where appropriate, protective action in the form of care proceedings.

#### **2.4.2 The problem of delay - early links with LASW practice and expert evidence:**

The architects of the Children Act 1989 anticipated care proceedings to be a reasonably short process, on average 12 weeks (LCD, 2002), indicated by the provision for Interim Care Orders (s.38) to be made initially for eight weeks, then by renewal for four weeks at a time (Masson 2010(b); Munby 2013b). However, relatively soon after the Act was implemented, concerns about lengthy proceedings, delayed legal decision-making for children and families, and increasing costs within the system began to emerge (Masson 2015). The Children Act Advisory Committee had been set up in 1991 to oversee the implementation of the Act and, within a few years, it was clear that delay was a significant problem (LCD 1994; LCD 1997b). In 1994 the committee commissioned a retired High Court Judge, Dame Margaret Booth DBE to investigate the issue of delay in care proceedings. The Booth report highlighted the increasing length of care proceedings, adverse impacts on children and families due to delays in legal decision-making, and cost to the public purse (Booth 1996). The report recommended improvements to judicial case management and inter-professional practice with statutory partners in care proceedings, notably local authorities and their social workers. In relation to evidence and witnesses within proceedings, Booth described a ‘proliferation of experts’ as a ‘source of serious delay’ (Booth, 1996: 16). Relevant to this study, Booth highlighted her concern that social work education courses did not prepare social workers adequately for court work, and she considered that inter-disciplinary learning between LASWs, legal professionals and the judiciary would assist (Booth, 1996).

The Children Act Advisory Committee remained in place until 1997, when it was dissolved and subsumed into the new Advisory Board on Family Law (LCD 1997b). Some progress had been made in relation to sharing and promoting the

recommendations from the Booth Report and the work of the Children Act Advisory Committee, including the publication and dissemination of a 'Handbook of Best Practice in Children Act Cases' (LCD 1997a), however momentum on implementing the recommendations of the Booth report was lost. Despite this work, concerns about delay in care proceedings persisted, resulting in a government led 'scoping study' on delay in Children Act proceedings, commissioned in 2000. The study reported in 2002, highlighting a significant level of concern:

24. When the Children Act 1989 was implemented in 1991, it was anticipated that it would take an average of 12 weeks for care cases to be resolved. This has proved over-optimistic and has rarely been realised in practice... By 1996 care cases were in fact taking 46.1 weeks from the time they started to the time of a final decision.

25. By the end of 2000, this figure had risen again to an **average** of 50.3 weeks, 4 times as long as the original projection and almost a year of a child's life. In 2001 the figure has reduced, but is still high at 47.1 weeks. (LCD 2002)

[original emphasis]

The scoping study gathered the views and experiences of professional stakeholders in the family justice system across England and Wales. In addition to a range of recommendations about improving case management, the report's findings included explicit consideration of the relationship between the (over-)use of experts, perceptions of social work expertise, practices within local authorities and delay:

60. Social services departments in a number of local authorities said that they were using experts to undertake part of the assessment process which would normally fall to them because of **a shortage of staff with the necessary**

**experience and expertise.** While this may be an entirely proper use of experts, more worrying was the indication that some social services departments and children's guardians **felt the need to instruct additional expert evidence to give their case more authority, that in effect their judgement would not be accepted without it.** (LCD 2002) [emphasis added]

62. Some local authorities and children's guardians also thought that the court process itself was leading to an overuse of experts. They believed that there was **pressure on the judiciary** to be seen to give the parents every chance of demonstrating that they could look after their children. This in turn led to the court process in effect becoming **a rerun of the assessment process** which the local authority had already undertaken before bringing the application in the first place. In their view this **implied criticism of the local authority case** necessitated expert evidence being brought in during the court process. One local authority **questioned the validity of the local authority spending time and money on a detailed assessment of the case if the court was going to order its duplication during the court process.** (LCD 2002) [emphasis added]

The study identified a significant 'other' cause of delay as pressure on resources, particularly in relation to local authorities and court administration. The report addressed problems faced by local authorities in recruiting and retaining experienced social workers, high turnover of staff, problems with sickness levels due to stress, and low morale across the sector. The report also highlighted a perception within local authorities that the courts did not trust them, leading to a tendency for local authorities to seek additional expert evidence within proceedings, to 'bolster' that provided by the LASW:

177. These recruitment and retention difficulties may be a contributory factor to local authorities' view that **the court often regarded their viewpoint as being somehow second rate when compared to that of the children's guardian or experts. This feeling of not being trusted also underpinned local authorities' use of additional experts.** A number of local authorities said that **courts made little allowance for the inexperience of staff and were quick to criticise and rare to praise, which exacerbated the feeling that social services were under siege.** (LCD 2002) [emphasis added]

A (judicial) commentator at the time also confirmed 'judicial scepticism' about social work expertise, as a contributory factor to the increasing and questionable use of experts in care proceedings:

There is no doubt that within the family justice system, the failure to avail of expertise already present in the case, perhaps encouraged by judicial scepticism about the expertise of social workers, has engendered in some instances a proliferation of outside experts whose role is often uncertain and vague. (Gillen J. 2002: 297)

The recommendations from the scoping study included the formation of a multi-disciplinary Family Justice Council (FJC) for England and Wales (replacing the local Family Court Business Committees), with local FJCs reporting in to it on issues and initiatives from each care centre. Improved partnership working, (re-)building trust between the court and local authorities, modernisation of systems and addressing resource issues (including recruitment and retention of social workers) were identified as key areas for long term action, in order to reduce delay and improve practice in the interests of children. (LCD 2002) Following the scoping study, practice reforms to

address the recommendations included a series of judicial protocols that aimed to improve case management and reduce case duration, with the introduction of target timescales for the completion of care proceedings. The intentions of these protocols were not always realised in relation to reducing delay and this later resulted in legislative change and mandatory timescales (Children and Families Act 2014 s.14 amended CA 1989 s.32(1)(a) to state that care proceedings must be completed within 26 weeks). These developments, highlighting links to LASW evidence, are summarised below.

#### **2.4.3 Practice and system reforms to address delay and links with LASW evidence in care proceedings**

The overall response to the recommendations from the earlier Booth Report (1996) and the Scoping Study (LCD 2002) in relation to judicial case management of case duration, was co-ordinated via the Lord Chancellor's Advisory Committee on Judicial Case Management in Public Law Children Act Cases. The Committee produced the *Protocol for Judicial Case Management in Public Law Children Act Cases*, described in their report as representing

‘... a collation of the best practice from around the country and is the first National statement of common practice and solutions.’ (LCD 2003: 92)

The protocol consisted of a detailed timeline for all care proceedings cases set out across six steps, from initial application to final hearing, with a maximum target for case duration of forty weeks (LCD 2003). The (then) President of the Family Division implemented the protocol as a Practice Direction in 2003, however the forty weeks target was not mandatory (there had been no changes to the court rules or statute). Nonetheless there was a clear expectation in the protocol that all would endeavour to

work to the timescales, unless there were ‘exceptional or unforeseen circumstances’ (LCD 2003: 92). Particular LASW documents were specified as required evidence for the application, to be prepared and filed by the LA at certain time points within the six steps. In addition the protocol also contained a ‘Code of Guidance for Expert Witnesses in Family Proceedings’ which set out a range of eleven points for any party or parties to address, if they wished to request the court’s permission to instruct an expert witness. These points were to be considered in the Case Management Questionnaire, to be completed prior to the Case Management Conference (between Day 15 and 60). One of the questions (albeit the ninth point in the list of eleven) asked:

Why the expert evidence proposed cannot be given by social services undertaking a core assessment or by the Guardian in accordance with their different statutory duties (LCD 2003: 61)

This requirement to justify a request for an expert witness by considering if the evidence could reasonably be provided by the LASW (and/or CG), echoed earlier concerns, as outlined previously. However, subsequent reviews of the implementation of the protocol suggested that perceptions of the ‘quality’ of LASW evidence (rather than the need for additional ‘discipline specific’ evidence) might be continuing to prevent the courts from reducing the use of expert witnesses, as intended. The *Judicial Thematic Review* of the 2003 protocol highlighted areas that had been anticipated as ‘obstacles to success’, and were considered to be preventing progress. In relation to LASWs, the review highlighted:

- There is a continuing significant shortage of social care professionals generally.



- The level of skill and expertise being provided by available social care professionals in particular when undertaking vital family assessments and in care planning is **not of a sufficiently high standard**. (DCA 2005: 17)  
[emphasis added]

The quality of the LA's application to court was also identified as a factor contributing to delay in the government review of care proceedings that reported in 2006:

3.10 ... When core assessments, (the local authority's assessment of the family and the parenting issues, the outcome of which has prompted the application for an order) and interim care plans (the local authority's initial proposals for the child's future care) **are not prepared in a timely way or to a high enough standard**, the courts through other means seek to 'plug the gaps' which takes time and may add to the total costs (DCA 2006:16) [emphasis added]

What is not clear in these references to 'standards', is whether it was the quality of the social work practice with children and families and/or the quality of the presentation of that practice in evidential form for legal proceedings that was being questioned. The importance of differentiating expertise in social work practice with families, and expertise in communicating social work evidence in care proceedings is discussed later, in Chapter 3 (p.87).

The 2006 government review of care proceedings made a range of recommendations in relation to factors considered to be contributing to delay. These included (for the first time) a specific recommendation about improving local authorities' processes prior to a care proceedings application:

### 3. PREPARATION FOR PROCEEDINGS

Improve quality & consistency of s31 applications:

- Effective scrutiny of applications to ensure the quality of local authority preparation
- Incentives to quality
- Local Authority performance in preparing applications to be monitored
- Judiciary to ensure local authorities pay for additional expert assessments when these are needed to ‘plug the gaps’ in core assessments. (DCA 2006: 4)

The recommendations from this review contributed to the development of an updated approach and a new legal protocol (replacing the 2003 protocol) – the Public Law Outline: Guide to Case Management in Public Law Proceedings 2008. The PLO was issued as a Practice Direction in April 2008 and for the first time a formal, requisite ‘pre-proceedings’ process for local authorities was included (Masson 2010a). This was in one sense a sensible, partnership approach to address an aspect of the now long-standing problem of delay in care proceedings, by making LA applications more ‘fit for purpose’ (from the court’s perspective). However, the introduction of the pre-proceedings process also indicated that the judiciary, and others concerned with reform of care proceedings, considered it necessary to influence internal social work processes within local authorities, at least in cases where care proceedings were being considered.

The PLO 2008 was subsequently updated and re-issued in 2010, however by this time it was clear that the efforts so far to reduce case duration in care proceedings were failing (MoJ 2011a; Masson 2015). This was considered in part to be due to a ‘spike’ in the number of care proceedings applications following the death of the child Peter Connelly in 2007 (Macleod et al 2010) and the potential for more risk averse child protection practice by LASWs, in the wake of widespread criticism of the professionals in the case

(Shoesmith 2016). However, there were also growing concerns about performance across the family justice system, leading to a major government review, led by Sir David Norgrove. The Family Justice Review (FJR) addressed the whole Family Justice System; the work began in March 2010, with interim and final reports published in 2011. In relation to care proceedings, the FJR identified significant, long-standing and ongoing concerns about the failure to reduce delays for children in legal proceedings, and the cost to the public purse of increasing numbers of lengthy proceedings (MoJ 2011a). Amongst various potential causes of delay, the review identified a perceived over-use of expert witnesses in care proceedings, echoing the findings in other, earlier reviews. In relation to this, the FJR interim report (MoJ 2011a) cited a range of research evidence including Bates and Brophy (1996), Hunt et al (1999), Brophy (2006) and Masson et al (2008). These studies had demonstrated an increase in the use of experts in care proceedings, which was linked to increasing case duration and the conclusion that the courts were instructing too many experts.

The FJR also identified that there was a ‘deep rooted distrust’ between the judiciary and local authorities (MoJ 2011b: 101, para 3.45). This distrust was considered to have contributed to a trend for additional expert witnesses in proceedings, to compensate for poor quality LASW assessments; an issue that had also been identified in previous reviews (LCD 2002; DCA 2005; DCA 2006). Linked with the issue of the court’s lack of trust in local authorities, the review identified and criticised a tendency for the courts to seek to ‘micro manage’ LA care planning processes. Courts were found to be focussing on the detail of care plans prior to making an order, including an expectation of definitive information from the LA about aspects of the proposed plan for the child/ren that were not related to the permanence plan:

The system is also operating now to create perverse incentives. The high use of experts, the close scrutiny of the care plan and a perception that courts do not trust local authority work all conspire to create a disincentive to the authority to do the work fully in the first place, as it is expected it will only be repeated once proceedings start. (MoJ 2011a: 101 para 4.70)

The PLO is based on an expectation that local authorities will carry out a thorough analysis of the issues before coming into court. This, in theory, should lead to quicker and simpler proceedings. Local authorities in effect feel let down by the courts that do not rely on their work. Courts in turn feel the work is of insufficient quality. This creates mistrust and sparks a vicious cycle of inefficiency and delay. (MoJ 2011a: 101 para 4.72)

#### **2.4.4 After the Family Justice Review – ongoing reforms and ‘repositioning’ LASW witnesses:**

The FJR recommended a range of improved inter-disciplinary processes, practice reforms and legislative changes, to address the serious concerns about performance, delay and cost across the family justice system. One of these recommendations was for primary legislation to ensure a reduction in the use of independent experts in care proceedings, with expert evidence commissioned only when necessary (MoJ 2011b: 18 para 86). The subsequent changes to the court rules in January 2013 (Part 25, FPR 2010) were followed by primary legislation (Children and Families Act 2014 (s. 13(6)) to enact this recommendation. Anticipating these changes, and in the context of the overall reform process that followed the FJR, the (then) President of the Family Division, Sir James Munby published a series of practice communications entitled *View from the President’s Chambers*. In his second ‘View’, addressing the ‘process of

reform’, Munby P made comments about LASWs and his expectation that (in the context of fewer independent experts and a revised PLO) they must now be perceived and treated as experts in care proceedings. Munby P (2013a: 6-7) stated [emphasis added]:

One of the problems is that in recent years too many social workers have come to feel **undervalued, disempowered and de-skilled**. In part at least this is an unhappy consequence of the way in which care proceedings have come to be dealt with by the courts. If the revised PLO is properly implemented one of its outcomes will, I hope, be to **re-position social workers as trusted professionals playing the central role in care proceedings which too often of late has been overshadowed by our unnecessary use of and reliance upon other experts**.

Social workers are experts. In just the same way, I might add, CAFCASS officers are experts. In every care case we have at least two experts – a social worker and a guardian – yet **we have grown up with a culture of believing that they are not really experts** and we therefore need experts with a capital E. The plain fact is that much of the time we do not.

Social workers may not be experts for the purposes of Part 25 of the Family Procedure Rules 2010, but that does not mean that they are not experts in every other sense of the word. They are, and **we must recognise them and treat them as such**.

Over a decade earlier, at the same time as the ‘Scoping Study on Delay’ was published (LCD 2002), another judicial commentator had also identified that the legal distinction

between expert and professional witnesses as categorised by the court rules may be contributing to perceptions of the status of LASWs as less than ‘expert’:

...the courts use [expert evidence] in a narrow sense, applying it to persons who are external to the proceedings and whom the court invites to advise it on specific issues and proceedings relating to the interests of the child. It is crucial that we take steps to widen that definition to ensure that witnesses such as social workers and children’s guardians who have professional qualifications and expertise within that area of qualification are accorded expert status (Gillen J. 2002: 296)

Munby P’s widely publicised comments about social workers and his expectation that they (all) be perceived and treated as experts in care proceedings could be analysed as a pragmatic attempt to re-construct prevailing, negative perceptions of social workers in care proceedings and perhaps more widely. Such an explicit call for recognition of professional social work expertise could potentially affect and shift the perceptions of lawyers, families and social workers themselves. However, in practice, would a suggestion that social workers be treated as experts result in their evidence being perceived as demonstrating expertise?

A few months after Munby P’s published comments, a notable judgment from the Court of Appeal (Munby P delivering the judgment) included serious criticisms of LASWs’ practice and their evidence in legal proceedings. The case of *Re B-S* followed earlier care proceedings where the final approved care plan was for permanence by adoption. The judgment highlighted serious concerns about social work and judicial practice within the care proceedings. Referring to a number of other cases where there had been similar concerns, the judgment demanded changes in the presentation of LASWs’

analysis within their written evidence. There was also criticism of judicial reasoning within written judgments, with the judgment insisting on a holistic, rather than linear judicial reasoning process in future cases. In relation to required standards of LASW practice and presentation of evidence the judgment in *Re B-S* [34] stated:

First, there must be proper evidence both from the local authority and from the guardian. The evidence must address **all the options** which are **realistically possible** and must contain an **analysis** of the arguments **for and against each option**. [emphasis added]

Later in the judgment, Munby P cites four other cases heard in the Court of Appeal within ten days prior to the hearing, where the LASW practice and evidence was judged to have fallen short of the standard required. Munby P's view of LASW practice (at least in these cases) was clear:

This sloppy practice must stop. It is simply unacceptable in a forensic context where the issues are so grave and the stakes, for both child and parent, so high.  
*Re B-S* [40]

*Re B-S* had a significant impact on legal and social work approaches to the preparation and presentation of LASW evidence, particularly in relation to the expression of the analysis underpinning the recommendation for the child/ren. Masson (2017) describes how in 2013 work was already being undertaken within the social work sector, by the Association of Directors of Children's Services (ADSS) and Cafcass, to provide practice guidance and standardised templates for LASW and CG written evidence in family proceedings, within the requirements of the PLO. However, in the wake of the *Re B-S* judgment, the ADCS and Cafcass revised their social work evidence templates

to ensure that LASWs' (and CGs') written evidence would be '*Re B-S* compliant' (ADCS 2016)

The case of *Re B-S* affected more aspects of practice than mentioned here (see Masson 2014 and Masson 2017 for a broader analysis). Additionally, other judgments following *Re B-S* sought to 're-balance' the ways in which LASW written evidence could and should be challenged. For example, in *Re R (a child) [2014]* EWCA Civ 1625 (42-43) Munby P states:

There is concern that *Re B-S* is being used as an opportunity to criticise local authorities and social workers inappropriately – there is a feeling that “arguments have become somewhat pedantic over ‘*B-S* compliance’” – and as an argument in favour of ordering additional and unnecessary evidence and assessments... It is said that when social worker assessments of possible family carers are negative, further assessments are increasingly being directed: “To discount a kinship carer, it seems that two negative assessments are required.”... Mention is made of a case where the child’s solicitor complained that the *Re B-S* analysis, although set out in the evidence, was not presented in a tabular format.

We are in no position to evaluate either the prevalence or the validity of such concerns in terms of actual practice ‘on the ground’, but they plainly need to be addressed, for they are all founded on myths and misconceptions which need to be run to ground and laid to rest.

## **2.5 Conclusion**

As part of ongoing reforms to the family justice system, there was encouragement from the senior judiciary to treat LASWs (and CGs) as experts and to rely on their evidence



more readily without recourse to additional expert witnesses (Munby 2013a). However, at the same time, criticism of LASW practice and evidence was explicit in influential judgments (*Re B-S*). Legal judgments and developments such as the Social Work Evidence Templates provide some guidance as to desired features (or at least the structure of) LASW written evidence, that might encourage legal evaluations of the evidence as competent and even ‘expert’. However, it is important to note that within the legal framework, the term expert witness is restricted by the court rules (PD25B, FPR 2010).

In his second ‘*View*’ (Munby 2013a), Munby P’s explicit use of the capital letter enabled a differentiation between the legal categorisation of a particular type of witness according to the court rules (Expert), and the more commonly understood, every-day (social) application of the term (expert). In practice, the title of expert is afforded by the rules to particular professional witnesses whose expert evidence is permitted. LASWs are, for logical reasons, excluded from the expert witness category. However, this may have added to and/or reinforced perceived hierarchies of professional expertise. In other words, this may have contributed to LASWs being perceived by others, and perhaps also themselves, as ‘non-experts’ in their professional role within care proceedings.

The next chapter considers how expertise is understood, by discussing theories of expertise generally, and in relation to the social work profession. In the context of family justice system reform, parallel reform processes in child protection social work are outlined, with reference to a desire to ‘reclaim’ social work expertise. Theories of expertise that enable a focus on the evaluation of expertise are considered, in relation to the role and status of LASWs as professional witnesses in care proceedings.

## **CHAPTER 3: PROFESSIONAL EXPERTISE – THE DEVELOPMENT OF SOCIAL WORK AS A PROFESSION AND A THEORETICAL OVERVIEW OF EXPERTISE**

### **3.1 Introduction**

This chapter is presented in two parts. The first part (section 3.2) begins with a brief overview of theories of professions and professionalization, as context for social work's historical claims to professional status and expertise. Links between professionalization of social work and claims to (or rejection of) professional expertise are highlighted, as are concerns about the (de-) professionalization of social work in the context of neo-liberal social policies and a drive for public accountability. Reference is made to various child abuse inquiries and system reviews that followed the implementation of the Children Act 1989. This leads to a discussion of the major review of child protection social work undertaken by Professor Eileen Munro (Munro 2011b), which included specific consideration of social work expertise. Reform processes in social work practice and education following the Munro Review are highlighted, focussing on how social work expertise has been considered and represented within subsequent developments.

The second part (section 3.3) presents a focussed review of literature relating to theories of professional expertise, as context for discussion of understandings of social work expertise within the study. This highlights a general dominance within the literature of theories focussing on the *development* of domain-specific expertise. During preliminary stages of the fieldwork, it became apparent that such developmental theories have limitations in understanding how social work expertise is communicated and evaluated. A more suitable theoretical framework was required, to aid understanding of the

communication and evaluation of expertise across disciplinary boundaries, within care proceedings. This provided the rationale for the choice of theoretical framework for the study; namely Collins and Evans' (2007) theory of expertises (explained further in section 3.3.3). Also during the preliminary stages of the fieldwork, it became clear that the preparation and presentation of evidence by social workers, for a legal 'audience' within care proceedings involved a range of deliberate practices. This led to the identification of Goffman's (1959) dramaturgical theory of the presentation of self, and in particular the concept of 'impression management', as a supplementary theoretical framework. This is explained further in section 3.3.4.

### **3.2 Part 1: Social work as a profession and the issue of social work expertise**

Whether and to what extent any occupational group is recognised as a profession is often linked with occupational claims to expert knowledge and practice in a specific domain or discipline, as well as formal statutory regulation or a 'protected title' (Baer 1986; and as discussed below). The profession of social work has undergone a lengthy process of development from its recognition as an 'occupational' group in the early twentieth century (McLaughlin et al 2016). Social work acquired its status as a regulated profession (in England) relatively recently, with the establishment of the General Social Care Council (GSCC) in 2001, under the Care Standards Act 2000 s.54 (1). 'Social worker' became a protected professional title in 2005, under the Care Standards Act 2000 s.61. In 2012, the Health and Care Professions Council (HCPC) replaced GSCC as the statutory regulator for social work, under the Health and Social Care Act 2012 s.209. The current regulatory body, Social Work England (SWE), was

established under the Children and Social Work Act 2017 s.36, and became the statutory social work regulator (in England) on 2<sup>nd</sup> December 2019.

These developments represent an overall recognition of social work as a profession, although it is perhaps inevitable that disruptions caused by frequent changes to regulatory structures will lead to some instability and perceptions of insecurity within the profession (BASW 2018b). Social work as a profession (and in particular child protection social work) has been subject to much public and political criticism, both in relation to the individual competence of workers and leaders, and the effectiveness of social work organisations and systems. Arguably, the issue of public and political confidence in the profession of social work reflects concerns about whether social workers are expert enough (or at all) in their practice, and this has been particularly apparent in child protection social work and in care proceedings (Munro 2011b). To provide some context for consideration of social work expertise within care proceedings, a brief theoretical overview of professions and professionalization is outlined below, in relation to professions generally and then in relation the development of professional child protection social work in England.

### **3.2.1 Theories of professions and professionalization – an overview:**

The development of sociological theories and debates about what is a profession and the process of professionalization reflects social and economic influences on the types of occupations seeking and achieving professional status. Since the early twentieth century, sociological theories of professions have included attempts to define the traits of a profession, as distinct from other occupations. Lists of traits often include, for example: a recognised body of specialised knowledge; certification of competence or

qualifying credentials achieved via an educational process; expertise in a specific domain of practice; ethical codes; and profession-specific regulatory processes (Flexner 1915; Parsons 1954; Freidson, 1994; Ackroyd, 2016). This illustrates a fundamental link between theories of professions or professionalization, and theories of expertise. The notion of ‘ideal-type’ professions is common within the literature, with medicine, the clergy (divinity) and law often cited as the definitive, ‘real’ professions (Flexner 1915; Harries-Jenkins 1970; Watkins et al 1992; Boon et al, 2005). Professionals within these occupational groups sought and were granted prestige, control of knowledge and power in pre-industrialised society (see, for example, Harries-Jenkins 1970; Watkins et al 1992; Boon et al, 2005 for fuller accounts).

Theorists have also identified that professional status required an external, societal acknowledgement or acceptance of the acquisition of the status, by certain other (powerful) groups, often the ‘ideal-type’ professions referred to above. In other words, those engaged in evaluating the practices of occupational groups were required to accede to the occupations’ claims to professional status. This relied, at least in part, on the utility and relevance of particular areas of work to emergent commercial, economic and welfare ideologies, processes and practices within society (Evetts 2003). An example of this was the emergence of public sector professions, during and following the establishment of the welfare state in the 1940s. Occupational groups such as social work, nursing and teaching were influential in designing modern welfare state provision, however they suffered from perceptions of a professional ‘hierarchy’, within which they were not always, if ever, accepted as ‘true’ professions (Weiss-Gal and Welbourne, 2008). Part of the issue in categorising these occupational groups as ‘true’ professions was their dependence on the public sector for their employment, creating a reliance for their professional status on a necessary relationship with the State. This was

in contrast to the earlier, 'collegiate' model of professions such as medicine and law, which (initially at least) were structured as professions with autonomy from the State and no expectation that their practice or professional group would be subject to political 'interference' (Payne, 2005; Ackroyd, 2016). The significance of this distinction for public sector or 'welfare' professions is the potential susceptibility of their professional status to political and economic policy and ideology. Declining ideological and fiscal support for the welfare state within a current and ongoing neo-liberalist policy agenda, could contribute to a sense of vulnerability for public sector professionals such as social workers, in relation to their professional status and standing within society (Garrett 2009; Rogowski 2010).

In summary, the development of professions over time has involved a range of perspectives and agents, and has been dependent on external and internal occupational, institutional and political influences. Theories of professions support the idea that professional occupational groups can emerge and acquire recognised professional status. The identified traits of early, 'ideal-type' professions have shaped the aspirations of occupational groups seeking to shift their status to that of a 'new' profession over time, by a process of professionalization. Additionally, the perceived higher status of the 'ideal type' professions has arguably been employed by the established professions and wider society, to evaluate the success (or otherwise) of professionalization for particular occupational groups, thereby creating and reinforcing a professional hierarchy (Austin 1983). When describing a recognised or aspiring profession, theorists often include a requirement for demonstrable 'expertise' in a particular knowledge domain and practice area. Reference to the development of domain-specific expertise is also included in theories of professionalization and the achievement of professionalism. How and whether occupations such as social work have acquired equal professional

status to the ‘ideal type’ or original professions (and thus able to claim the same level of expertise) is contested, as discussed further in the next section. This in part reflects the lack of consensus as to how a profession is defined, and also ideological positions in relation to social structure, function, power and control (Evetts 2003).

### **3.2.2 The development of ‘professional’ social work in England – seeking and/or rejecting expert status?**

Philanthropic and charitable activities in the UK in the nineteenth and early twentieth centuries are recognised as early forms of organised social work (Payne, 2005; Harris 2008; Rogowski 2010). A prominent example was the Charity Organisation Society (COS), which was established in 1869 to co-ordinate and distribute charitable relief. Within the legal framework of the 1834 Poor Law Amendment Act, case workers in the COS were required to ‘sort’ the deserving and undeserving poor, diverting the undeserving to the workhouse (Harris 2008; Bamford, 2015). The deserving poor were then helped to make the required moral and individual changes in their lives, to restore moral character and resume a position of self-help. These caseworkers were predominantly women (Rogowski 2010), who used a model of casework organised around a moral ideology and discourse of individuals’ responsibility for their own situation. It is interesting to note that the COS was led by what Harris (2008: 666) describes as the “new capitalist society’s professional elite (clergymen, lawyers, doctors, civil servants)”. Although there were notable women such as Octavia Hill who were involved in leading community developments at the time (Rogowski, 2010; Bamford, 2015), this was a predominantly male elite who brought an explicit focus on implementing ‘professional’ practice and procedures as the work of the COS developed.

The COS established Schools of Sociology and Social Science in London and Liverpool in 1903 and 1904 respectively, and sought to codify their casework method and train those involved in the work. Their aim was to define knowledge and method, and reshape unskilled philanthropic activities undertaken by the dutiful rich into ‘expert’, professional (social work) activity (Harris 2008; Rogowski 2010). In 1908, the University of Birmingham became the first in the UK to enrol full time social work students for their new (one year) social studies course (Davis, 2008). The aim was to equip students with knowledge for social work activity within the local philanthropic ‘settlements’ (a network of community based charitable support for poor families and individuals, based on the Toynbee Settlement in London). The curriculum for the Birmingham course was entitled ‘Training for Social and Philanthropic Work’ and included lectures on ‘Law for Social Works’ and ‘Aims and Methods of Social Work’ (Davis, 2008:6). These examples of early provision for social work training and education may have been preliminary steps in the professionalization of social work. However, in practice, efforts to integrate theory and practice and provide vocational training within an academic setting were hindered. In particular, the COS’s preference for practical experience informed by a moral discourse (aligned to the Poor Law provisions) reflected the prevailing moral view that those in need could, and would, be helped to help themselves by well-meaning people of good character. Features of a profession that had been identified by commentators such as Flexner (1915), included establishing a discrete field of knowledge and skill, implementing a system of education and training and the formation of a structured organisation. The development of these features within social work was restricted by the philanthropists’ emphasis on ‘unscientific’ practice wisdom, and was used by others to assert that social work could not be a ‘true’ profession (Payne, 2005).



Nonetheless, during the early twentieth century it became more important for social workers to be recognised as professionals. Casework increasingly entailed collaboration with doctors, lawyers and others, who relied on these early social workers but tended to perceive them and relate to them as well-meaning amateurs. As Austin (1983: 360) describes:

Their understanding of family and community dynamics was often ignored, both because they were usually women and because they were not viewed as professional equals.

Over time, there were various attempts by social workers located across a range of service areas to organise themselves as a distinct professional group. Developments in training and education for social workers continued to emerge (albeit gradually) in the early twentieth century (Younghusband, 1981), and this assisted with social workers' claim to professional status. Alongside this, in 1936, twelve social work associations including hospital almoners and the emergent psychiatric social workers, came together to form the British Federation of Social Workers, with a view to collaborating on issues such as training and certification; part of an explicit aspiration to 'professionalize' (Aldridge 1996).

In the 1940s, the impacts of industrialisation and poverty informed changes in ideas about welfare and social support, including the role of social workers. The Ministry of Health began to employ social workers to deal with social problems arising from the impact of evacuation on children and families as well as homelessness and returning prisoners of war (Rogowski 2010). The Beveridge report of 1942 and a raft of welfare legislation including The National Assistance Act 1948 saw the end of the remains of the Poor Law system, the emergence of the welfare state and potentially a more

structured position for social work within the new welfare system (Harris 2008; Barnard 2008). Over the same period, the Curtis Report of 1946 paved the way for the Children Act 1948 and a unified child care system where responsibility for children living away from their families was held by one government department, with specialist social workers (children's officers) based in children's departments (Jones 2010). Additionally, there were increases in the provision of university based social work education and training, incorporating influential developments in the field of psychology within the developing knowledge and practice base for child care social work. These were predominantly based on psycho-social approaches, informed by theorists such as Freud and Bowlby (Munro 2008). The addition of this distinct and specialised knowledge base to social work education and training enabled an enhanced claim to expertise and professional status by reference to psychological as well as social scientific knowledge (Payne, 2005). Arguably, this reflected further steps in the professionalization of social work and the development of what would become professional child protection social work.

A key stage in the development of social work as a profession followed the 1968 Seebohm Report. Local Authority Social Services departments were established and LA social work became situated as a generic, 'bureau-professional' activity (Payne, 2005; Bamford, 2015). LASWs dealt with the range of needs in families and communities, and were not specialised into areas of specific knowledge and practice (or areas of expertise). Legislation such as the earlier Children Act 1948 and the Children and Young Persons Act 1969, helped to secure child care social work practice within state bureaucracies, enabling social workers to claim professional status and expertise in relation to social work with children and families, as part of their generic role (Rogowski 2010). The establishment in 1971 of the national body CCETSW (Central

Council Education and Training in Social Work) consolidated the preceding expansion of accredited social work training in universities, and reflected the ongoing process of professionalization in the context of state requirements for an educated and accountable social work workforce (Parton 2006; Munro 2011b). This development of a formalised, national system for social work education and training, enabling the attainment of recognised credentials (qualifications), enhanced social work's claim to a distinct body of knowledge, expertise, and legitimised authority.

The appeal of achieving professional status within various occupational groups during the twentieth century reflected a positive conceptualisation of the professional as an educated, skilled and altruistic worker; an expert within a particular occupational field (Rogowski 2010). However, in the 1970s strong critiques of professionalism emerged, including within social work practice. Claims by professionals for status, power, occupational monopoly and control based on expertise were categorised as elitist (Johnson 1972; Bamford 2015). This was illustrated in the radical social work movement of the 1970s and 80s, which applied a predominantly Marxist analysis to the operation of the state in relation to the general population (Payne, 2005). The role of social work, particularly LA based social work, was considered a potentially oppressive form of state control over working class families and children. The movement encouraged rejection of 'professionalism' and 'expertise' within social work and social work education, instead promoting the empowerment of service users. It was considered that expertise should be recognised in the lived experience of the service users themselves, rather than the educated professional 'expert' (Parton, 2014; Rogowski 2010). Some commentators have challenged this binary approach to understanding expertise, professionalism and professionalization (see, for example, Healy and Meagher 2004), advocating that concepts such as professionalization and

expertise can and should be broadened to enable a more flexible, inclusive and collaborative understanding and application in practice.

### **3.2.3 The influence of policy, child protection inquiries and system reviews on perceptions of social work expertise since the Children Act 1989:**

The emergence of New Right ideology and neoliberal policies in the 1970s and 80s was influential in the evolution of contemporary state social work practice with children and families. Parton (2006) describes increasing disillusionment with the social democratic State built in the post war era, along with the emergence of :

“...(an) individualised conception of social relations, whereby the market was seen as the key institution for the economic sphere, while the family was the key institution for the private sphere.” (Parton 2006:36).

This was reflected within child protection social work, with child abuse and neglect often seen as an issue located in ‘problem’ families, with less (if any) consideration of societal explanations such as the impact of poverty on parenting capacity (Taylor 2009; Featherstone et al 2014). These political and ideological developments were occurring during a time when child protection social work expertise (in particular) was subject to regular public challenge. Social workers were criticised both for not protecting children, and for intervening inappropriately or over-zealously, illustrating the (at times) contradictory expectations of the role of social work professionals within the private sphere of family life (Fox Harding 1997). Along with an increasingly individualised approach to social problems and a desire to re-balance the role of the state, such influences were part of the backdrop to the development and implementation of the

Children Act 1989, as reflected in its aims and principles relating to state intervention in children and parents' lives (Tunstall 1999; Parton, 1996; Featherstone et al 2018).

As discussed in chapter 2, an extensive range of statutory and practice guidance was issued at the time of the implementation of the Children Act 1989, reflecting an increasing emphasis on the proceduralisation of social work practice. As the neo-liberal policy project progressed within public services, emphasis on increased public accountability within child care social work was seen in the 'new managerialism' of the 1980s and 90s, and the 'Best Value' and 'Quality Protects' policies of the late 1990s and early 2000s (Parton 2006; Parton 2014). In addition, numerous public inquiries into child death tragedies fuelled ongoing societal criticism of child protection social work, often recommending further proceduralisation of practice, to deal with and prevent perceived mistakes, attributed at least in part to a lack of expertise by LASWs (Taylor 2009; Munro 2011b; Parton 2014). The Laming Report of the public inquiry into the death of Victoria Climbié (Laming 2003) addressed standards of practice within and between professionals in child protection social work, housing, health and the police. The review made recommendations for (amongst other things) increased managerial oversight of frontline social work practice, including that all social work assessments should be 'signed off' by a manager (Recommendation 25, Laming 2003), and case audits conducted by social work managers every three months (Recommendation 30, Laming 2003).

The Laming Report (2003) recommended enhanced systems of accountability, and at the same time lamented diminished opportunities for social workers to exercise professional judgement, due to requirements for compliance with management systems, including the newly introduced Integrated Children's System (ICS) (Shoesmith, 2016). The impacts of proceduralisation and a focus on 'system compliance' (rather than

professional judgement) within child protection social work practice have been explored in depth elsewhere (see, for example, Broadhurst et al 2010; White et al 2010; Parton 2014). Of relevance here is that a focus on standardised procedures for practice, derived from the prevailing social policy emphasis on accountability, arguably de-skilled and de-professionalized LASWs, contributing to a lack of confidence in social work expertise, both within and outside the profession.

Lack of confidence in the expertise of child protection social workers remained apparent within the media and amongst politicians, who tended to focus ‘blame’ for subsequent child death tragedies on individual child protection social workers and managers (as opposed to highlighting systemic factors affecting child protection practice) (Jones 2014; Parton 2014; Ruch et al 2014; Shoesmith 2016). There continued to be calls by politicians and the media to ‘improve’ practice in the field of child protection social work in response to child death inquiries (Ferguson 2011).

Underpinning this, the individualism of neo-liberal ideology and policy developments, and a focus on individual accountability within managerialist approaches to ‘professional performance’, arguably encouraged a ‘blame culture’ (Munro 2008; Parton 2012). This came into sharp focus again with the death of Peter Connelly (also known as Baby P) in 2007. On 11<sup>th</sup> November 2008, Peter Connelly’s mother, her partner and her partner’s brother were convicted of ‘causing or allowing’ Peter’s death. Publication of the convictions led to the ‘naming and shaming’ of the LASWs and LA senior managers who had been involved with Peter and his family prior to his death, in the media and in parliament (Ferguson 2011; Jones 2014; Shoesmith 2016; Warner 2018). The media response was one of ‘moral outrage’ (Parton, 2012; Ruch et al 2014), focussing on the perceived failings of individual social work practitioners and leaders, which led to public and political pressure for government and politicians to be seen to

act. A week later, on 17th November 2008, the government commissioned The Laming Progress Report (Laming 2009: 94).

The Laming Progress Report (Laming 2009) was in part a response to the persistence of negative perceptions of child protection social work practice since the first Laming Report (Laming 2003), but it was also intended to be viewed as an immediate response by the government to the public and media outcry in relation to Peter Connelly's death (Parton 2014). Following the media publicity in November 2008, there had been significant increases in child protection referrals, child protection plans and care proceedings applications across local authorities generally (Macleod et al 2010; Munro 2010b). This was arguably a result of concerns amongst LASWs and managers about the increasing 'blame culture' referred to earlier, fuelled by ongoing negative media, political and public perceptions of child protection social workers and leaders, leading to more risk averse social work practice (Munro 2010b; Parton 2014; Warner 2014; Rogowski 2015). The commissioning letter to Lord Laming, from Secretary of State Ed Balls, specified that the report should include a focus on barriers in the legal process for applications to 'take a child into care', which might impact on effective and consistent safeguarding practice (Laming 2009: 94). Consequently, unlike the earlier Laming Report in 2003, the recommendations in the Progress Report (Laming 2009) included reference to care proceedings and the family justice system. In relation to care proceedings, the pressure of increasing numbers of applications following Peter Connelly's death was adding to existing concerns about delay within the family justice system (as discussed in Chapter 2), and this informed the findings in the Laming Progress report (2009). However, at this stage, the Laming recommendations in relation to care proceedings focussed on judicial concerns about the potential over-use of

independent expert witnesses, without linking this to an explicit consideration of the expertise of LASWs:

The Ministry of Justice needs to take immediate action to address the length of delays in care proceedings to ensure that it is delivering its commitment to meet the timetable for the child... Particular thought should be given to the use of expert witnesses to ensure they are used only when appropriate and do not delay proceedings unnecessarily. (Laming 2009: 80)

A month after commissioning the Laming Progress Report, in December 2008, the government also established the Social Work Task Force, whose membership included leaders in social work practice and social work education. The Task Force was to address a range of issues of concern for the government, the media and the sector relating to standards of practice – described as the ‘nuts and bolts’ of social work (DCSF 2009a:23). The Task Force adopted a broad scope encompassing the social work profession as a whole, and made a range of recommendations addressing public perceptions of social work, recruitment and retention issues, social work education and training, career progression, the need for a national college of social work and a single national reform programme for social work (DCSF 2009b). These recommendations were accepted by government (DCSF 2009c) and paved the way for a series of developments relating to social work education and professional standards (led by the Social Work Reform Board, established in 2010). Links between these developments and perceptions of social work expertise are outlined in the next section, below (p.74).

Returning to developments within child protection social work practice, concerns about the child protection system were ongoing in parliament, including the (then opposition) Conservative party’s ‘Commission on Social Workers’ between 2007 and 2009 (Parton



2012). In May 2010, there was a change of government from New Labour to the coalition between the Conservatives and the Liberal Democrats, which led to another strand of child protection social work review and reform. In June 2010, a month after the general election, the government announced that Professor Eileen Munro would lead a whole system review of child protection social work in England. Munro was and is a leading social work academic in the field of child protection, and the Conservatives had earlier identified her to lead a review of the child protection system. Munro's extensive work in relation to child protection practice had already included a focus on the issue of social work expertise in relation to decision-making. For example, in the second edition of her book 'Effective Child Protection' (Munro 2008), Munro included a chapter entitled 'Expertise in Child Protection Work'.

The Munro review was one of several 'sector' reviews introduced by the new coalition government at this time, another being the Family Justice Review led by Sir David Norgrove (as discussed in Chapter 2). Munro produced 3 reports: Part 1 in October 2010 (Munro 2010b) provided a systemic analysis of the child protection 'landscape' at the time, an Interim Report in February 2011 (Munro 2011a), focused on the 'child's journey' within the child protection system, and the Final Report, 'A child-centred system', was published in May 2011 (Munro 2011b). In each of her three reports, Munro included reference to the issue of social work expertise, including knowledge about how expertise may develop, and the experiences of social workers in child protection services. The final report included Munro's recommendations arising from the complete review process and in the executive summary, Munro described her proposals for reform as:

moving from a system that has become over-bureaucratished and focused on compliance to one that **values and develops professional expertise** and is focused on the safety and welfare of children and young people. (Munro 2011b:6) [emphasis added]

The final report contained a chapter entitled ‘Developing social work expertise’ (Munro 2011b: 84). In this, Munro explored theories about how expertise develops, and (from her review) the aspects of child protection social work where expertise is required. She also addressed managerial approaches within contemporary child protection practice, including whether these help or hinder social workers to develop expertise and practise ‘expertly’. Munro identified that developing social work expertise requires more than the accumulation of knowledge and experience over time. Rather, she highlighted that reflection on and learning from experience was required to promote the development of social work expertise, along with a relationship-based approach to practice and the application of both analytical and intuitive reasoning and decision-making. Munro also stressed the importance of organisational culture and leadership approaches in facilitating or curtailing both the development and the demonstration of expertise within practice. Munro found that effective social work practice with children and families was being constrained by an over-riding emphasis on procedures and timescales for completion of tasks, with compliance used as a managerial measure of practitioner and organisational ‘performance’ (Munro 2011b). She emphasised and recommended that there should be reduced proceduralisation of practice, to encourage the exercise of professional judgment within child protection social work. Munro identified the exercise of professional judgement as an important feature of professional expertise,

which was being curtailed by an overly prescriptive, managerial culture, in response to political and media ‘blame’ for perceived failings.

Munro concluded her chapter on developing social work expertise with a section entitled ‘demonstrating expertise: the courts’ (Munro 2011b: 98), within which she referred to the parallel family justice review (FJR) process that was ongoing at the time. Munro’s stated aim was that her review would seek to complement the FJR, by improving the quality of social work practice (Munro 2011b: 98). She cited examples from the FJR interim report relating to the court’s lack of trust in social work practice and social workers’ consequent loss of confidence within care proceedings (Munro 2011b: 99). Munro’s subsequent discussion of ‘issues identified for effective practice’ in care proceedings did not include explicit consideration of the role of the LASW as a professional witness, providing written and oral evidence to the court. However, she did refer to the relevance of ‘presentational’ aspects of court work, linking effective presentation (of evidence) to an increased likelihood of achieving best outcomes for the child (Munro 2011b: 101). The distinction between expertise in ‘doing’ social work practice with children and families and expertise in ‘presenting’ or ‘communicating’ evidence of social work practice in court will be highlighted as an important aspect of this study, in Part 2 of this chapter.

Munro’s overall recommendations for system reform included specific ideas to improve the development and retention of social work expertise within child protection practice. In relation to retaining social work expertise within direct work with children and families, Munro recommended the development of additional professional career pathways to develop expertise and leadership within social work practitioner roles with

children and families (as opposed to social workers' career progression options being limited to management roles) (Munro 2011b).

### **3.2.4 Tensions within and between child protection reforms and family justice reforms**

Many of the Munro Review recommendations in relation to the child protection system were taken forward as part of broader reforms for improvement across the profession of social work. The College of Social Work, established in 2012, took forward the work of the Social Work Task Force and Social Work Reform Board in developing the Professional Capabilities Framework (since updated, BASW 2018a). The PCF outlined nine domains of knowledge and skills required for students, newly qualified social workers, experienced practitioners and leaders, reflecting a desire to pursue enhanced career progression opportunities within practice, as outlined above. Chief Social Workers (one for Children and Families and one for Adults) were appointed in 2013, resulting in the Social Work Reform Board being disbanded, in the expectation that the Chief Social Workers would lead future social work reforms. However, Munro's recommendation for a move away from a prescriptive, compliance culture within child protection social work practice proved difficult to sustain in relation to care proceedings, particularly when judicial dissatisfaction with social work practice and evidence came to the fore again in 2013, with the cases *Re B* and *Re B-S*.

As discussed in Chapter 2, interaction and tensions between the systems of law and social work were apparent during 2013. The Association of Directors of Children's Services (ADCS) and Cafcass had developed and issued a new, standardised template for LASW evidence. Described as a 'short, sharp document', the SWET was piloted

from 1<sup>st</sup> July 2013 (Community Care 2013). The pilot was paused following the *Re B-S* judgment in September 2013, to allow for revisions in line with *Re B-S* ‘requirements’. A revised SWET was introduced in 2014, and updated again in 2016 (ADCS 2016). The SWET was a social work-led initiative, arguably intended to assert some professional control in the context of (contradictory) judicial ‘directives’ about written social work evidence as represented in Munby P’s second ‘*View*’ (Munby 2013a) and the judgment in *Re B-S*. The SWET introduced a standardised approach, ‘shaping’ social work evidence to meet legal preferences and requirements. Pragmatically, this appears to be an efficient approach for LASWs engaged in a legal process within care proceedings, who are seeking to persuade the court to decide in accordance with their recommendations. However, the use of a ‘standardisation’ response to practice development and improvement, is a familiar and critiqued approach within the social work field (White et al 2009; Broadhurst et al 2010; White et al 2010; Munro 2011b).

These interactions between law and social work are not necessarily neutral or benign. Theorists such as Bourdieu (1987), Habermas (1987) and Teubner (1989) have explored the role of law in society, including the concept of ‘juridification’ as the influence (or infiltration) of law, legal rules and legal discourse within other disciplines, social structures and social practices, at times to the detriment of those processes and practices. In relation to (child) welfare and law, theorists such as Donzelot (1980), King and Piper (1995) and Dickens (2008) have explored the relationship between welfare (social work) and law, debating the relative positions of each and the potential impacts on social work and legal practice of the dominance of either. The long standing imperative within the family justice system to reduce delay and ‘speed up’ care proceedings, has resulted in a focus within family justice reform on ‘correcting’ the

practice of social workers and local authorities prior to and within care proceedings (Dickens and Mason 2016). Juridification of social work processes such as pre-proceedings meetings (by their inclusion as part of the PLO), may result in an overly legalistic process, potentially undermining the effectiveness of social workers in their practice with family members, within the social work process (Masson and Dickens 2013). In relation to LASWs as professional witnesses, the influence of the judiciary on the construction of social work evidence (via ‘guidance’ within judgments such as *Re B-S*), and the response of social work leaders to ‘comply’, arguably reflect these broader processes of juridification of child protection social work practice. This issue is discussed in relation to the data from the study in Chapter 10 (p.305).

### **3.3 Part 2: Theories of expertise**

This section provides a brief overview of aspects of the literature relating to experts and expertise, leading to a focus on professional expertise, social work expertise and the communication and evaluation of expertise across disciplinary boundaries, these aspects being most relevant to the research questions and aims of the study.

#### **3.3.1 Theories of expertise – an overview:**

The study of experts and expertise can be traced back through many centuries of western philosophical and scientific thinking. Early philosophers such as Socrates and Aristotle acknowledged the usefulness and ‘special status’ of superior, domain specific knowledge, highlighting how such expertise aids the development of scientific knowledge and understanding of the world (Dreyfus and Dreyfus 1986; Ericsson et al 2018). In pre and post-industrial (western) societies, recognition of the value of superior

domain specific knowledge and skill (expertise) was apparent in the development of trades, guilds and professions, with expert status attributed via accreditation and credentials (Fook et al 1997; Ericsson et al 2018).

Empirical studies exploring expertise have included the study of expert performance in a wide range of domains of activity, such as the mastery of a musical instrument to virtuoso level, accuracy in medical diagnosis of particular diseases or health problems, and the performance of champion chess players (Ericsson and Smith 1991). This has included consideration of identifiable inputs such as length and type of training and experience, and measurable outputs such as numbers of patients accurately diagnosed or technical problems solved, to identify characteristics and practices of ‘superior performers’ (Baer 1986). Such studies have been used to provide ‘benchmarks’ for superior or expert performance in a particular domain, to enable accreditation and/or qualification within various social and professional roles and activities (Fook et al 1997).

Studies of the development and achievement of expertise are useful to inform training for superior performance, for example in elite athletes and those in high risk/high stakes roles such as surgeons and pilots/air traffic controllers (Weiss and Shanteau 2003; Endsley 2018). Many theories identify a process of progression from novice to expert over time, usually dependent upon length of experience, deliberate effort, practice and motivation (Ericsson et al 1993). Studies across various disciplines (for example, medicine, accountancy and economics) have considered the practices involved and conditions for the development of expertise in domain-specific expert practice or performance (Mieg 2001; Weiss and Shanteau 2003). Within occupational and professional education and skills training, understanding how domain-specific knowledge and skills can be developed (from novice to expert) and evaluated against

agreed standards of accomplishment, enables programmes of learning and training to be developed, and qualifications or accreditation of expertise in a particular domain to be awarded (Fook et al 1997; Mieg 2001). These social aspects of expert performance such as social status, credentials, licensing and level of income have often formed an additional basis for definitions of expertise in occupational roles and settings, within broader notions of professionalism and professionalization (see also Baer 1986; Mieg 2001; Mieg and Evetts 2018).

The relationship between professionalization, professional expertise, knowledge and power (often drawing on Foucauldian ideas of governmentality) has been identified as creating particular tensions and challenges for ‘welfare’ professionals, including social workers (see for example, Gilbert and Powell 2010). Within the public sector, users of services (and carers) may be referred to as ‘experts by experience’, and there has been an increasing focus on the role and importance of citizens, service users and carers in designing and implementing research, policy and practice developments (McLaughlin 2009). Although not a focus here, the concept of ‘lay’ expertise has been an additional, important area for research in relation to understandings of expertise (see, for example, Selinger 2008).

Many contemporary studies of expertise include a focus on expert decision-making, linking human behaviour, cognition and skill development (Mieg 2001; Mosier et al 2018). Within this, there have been links with a particular strand of theoretical and empirical research, first developed in the 1960s within computer science and the emerging field of artificial intelligence (Dreyfus and Dreyfus 1986; Buchanan et al 2018). Whether (and if so how) computers can replicate human expertise, and particularly human intuition as a feature of expertise, has been a key question in relation to developments in artificial intelligence (Germain 2012). Dreyfus and Dreyfus (1986)



focussed their work on understanding how expertise develops in humans, concluding that the complexity of human decision-making and judgments could never be matched by digital computing, algorithms and artificial intelligence. They identified five stages of skill acquisition in the development of human expertise: novice, advanced beginner, competent, proficient and expert. Their model is based on a learning process within a spectrum of development from conscious application of rules (or procedures) applied to all situations regardless of context (novice), to unconscious, intuitive recognition, adaptation and context-specific application of similar past experiences to new situations (expert). Dreyfus and Dreyfus' work raised challenges to the early work in the field of artificial intelligence by studying human expert behaviour, highlighting that some features of human expertise (such as intuition) cannot be replicated in computer programming. Debates in relation to the use of artificial intelligence, predictive analytics and the potential risks of reliance on such technologies within social life and public services continues, including within contemporary child protection social work in England, and internationally (Russell 2015; Dencik et al 2018; Keddell 2019).

As outlined, there is a wide range of domain-specific studies of expertise across disciplines, for example sociology, philosophy, science, technology, music, sport. Mieg and Evetts (2018) provide an example of a more an integrated approach, incorporating cognitive and social psychology and the sociology of professions. They locate the study of expertise, and in particular the development of 'professionalized' expertise, within social processes and structures. Drawing on work exploring expertise within individuals, they identify 'excellence' as a dimension of expertise, developed as a consequence of deliberate practice and education. In addition, communication and organisational skills associated with socio-cognitive competence and commitment to a profession combine to enable a second dimension of expertise - professionalism. Whilst

Mieg and Evetts' approach is limited to a domain-specific consideration of expertise, they do provide a less 'individualistic' model of expertise development, acknowledging the influence of individual, social and structural factors on expertise, including the availability of social and cultural capital.

### **3.3.2 Understanding social work expertise:**

The identification of features of social work expertise, and the processes for achieving expertise, is useful for those seeking to develop professional social work expertise in themselves and others. Professions often focus on education and training as a response to concerns about competence and expertise, reflecting a perspective where these are acquired characteristics and where 'practice' improves by learning and experience (Drury-Hudson 1999). Reforms to social work education and training reflect this approach, illustrated in, for example, the development of the Professional Capabilities Framework (BASW 2018a), although there have been conflicting views about where the focus should be, in developing social work education and training (DH 2014; DfE 2014a). The PCF was developed in response to the recommendations of the Munro Review (2011b), the Family Justice Review (MoJ 2011b) and the Social Work Reform Board (SWRB 2012) and represents a recent formulation of what is considered (by the profession) to constitute competence and expertise within social work practice. The PCF incorporates nine domains of knowledge, skills and values required for practice as well as levels of capability through which social workers may progress, from students in pre-qualifying education and training, via further levels as qualified practitioners, through to strategic leadership. The PCF refers explicitly to expertise from the 'Social Worker' level onwards, suggesting that it is only within the 'Student' and 'Assessed

and Supported Year in Employment' (ASYE) levels that some degree of expertise is not expected in professional social work practice (BASW 2018a). For LASWs the ASYE year is usually their first year in employment after qualification, suggesting that qualified social workers of one year post-qualification experience, who have successfully completed their ASYE may be expected to begin to demonstrate some features of expertise in their practice.

Theories of social work expertise have grappled with the 'fluid' boundaries of social work knowledge (Fook et al, 1997). Some seek to avoid privileging professional knowledge and expertise over the experiences of people with whom social workers engage, and this too has provided a challenge to the notion of professional expertise within social work (Parton, 2014). Nonetheless, research exploring social work expertise in particular service settings has followed similar approaches to those followed in the general literature on professional expertise, including both the identification and development of expertise and expert practice (Fook et al 1997; Weiss and Shanteau 2003). Examples include studies that base their definition of an expert on qualifications or credentials (Ryan et al 2006), or level or length of experience (Summers et al 2012). Some studies seek to compare the practices and performance of experts and non-experts or novices, with students in professional training programmes often followed up in relation to their professional development over time and/or selected as a comparative sample (see for example, Davidson-Arad and Benbenishty 2016; Zeira and Schiff 2014). Other studies focus on the conditions for progression from non-expert to expert, comparing non-experts with less and more experienced experts (Fleming et al 2015).

Fook et al (1997) and Mayhew (1999) outline that understanding complex human judgement requires more than the replication of pattern recognition 'learning'

processes, as outlined in Mayhew's example of research with chess grandmasters and their development from novices to experts. In addition to pattern recognition, accumulated experience (as opposed to length of experience) is said to be a crucial component in developing social work expertise (Munro 2008). Length of experience is relevant to developing expertise only if learning from the experience is accumulated, built upon and applied. Otherwise, five years' experience may, in effect, equal one year's experience five times, without progress (Mayhew 1999). Klein (2000, cited in Munro 2011b: 88) sets out four conditions for the effective development of expertise: engagement with deliberate practice, setting specific goals and evaluation criteria; compilation of extensive 'experience banks'; obtaining accurate, diagnostic and timely feedback; and enrichment of experience by ongoing reviews of prior experience, in order to gain new insights and lessons from mistakes. This framework by Klein highlights the inclusion of ongoing critical reflection in relation to practice, in the development of expertise (this will be discussed again later, with reference to Collins and Evans' 2007 theory of expertises).

In studies of social work expertise, the acquisition and application of domain-specific knowledge is often identified as a key feature of the development and identification of expert practice or performance (for example, Fook 1997; Drury-Hudson 1999; Taylor and White 2006). Drury-Hudson's (1999) study compared novice and expert social workers using professional knowledge in decision-making in child protection cases, including theoretical, personal, practice, empirical and procedural knowledge. In line with other research studies focussing on domain-specific knowledge, Drury-Hudson's study indicated that experts were better able to articulate and integrate theoretical and empirical knowledge within their practice and decision-making. Drury-Hudson acknowledged that her study did not prove that experts made better decisions than

novices, however she found that experts applied knowledge to differentiate between similar cases, reaching individualised assessments of risk to children. As such, she suggested that ‘expert’ decision-making is likely to be more specific, more accurate and less open to error. As an aside, Drury-Hudson’s criteria for selection to her ‘expert’ sample was ten years post qualifying social work experience, of which five years was in child protection. There is currently a lack of reliable, longitudinal data about workforce retention within child protection social work. However, available information from a range of sources suggests that the numbers of staff remaining in social work practice with this level of experience may be much fewer than previously, with some suggesting that many social workers move on from local authorities within five years (Research in Practice 2015; DfE 2019a; DfE 2019b).

Theories of social work expertise may also include the command and/or mastery of a body of knowledge as a feature developed over time, and often within professional education and training (Drury-Hudson 1999; Fook et al 1997; Taylor and White 2006). This perspective assumes that social work knowledge is substantive and declarative (Fook et al 1997). Studies also suggest that demonstrating expertise is equated with the ability to articulate formal theory and research underpinning practice (see, for example, Drury-Hudson 1999; Clifford and Williams 2002; Merighi et al 2005; Fook et al 2007; Hill 2009). Latterly this has been illustrated in the development of the Knowledge and Skills Statement (KSS) for child and family social work (DfE 2018b), and in the recent (and for some, controversial) introduction of the National Assessment and Accreditation Scheme (NAAS) for child and family social workers. The aim of the NAAS is to ‘test’ the knowledge and practice skills in social workers following their first year in practice (DfE 2018c). However, some studies of experts and expertise have

questioned the relevance of an ability to articulate substantive and/or declarative knowledge, to the performance of expert practice. For example, Kondrat (1992) states:

Indeed, the case may be made that simple, linear applications of theory to the concrete case are more frequently the mark not of the expert but of the novice professional, one who is either unaware of the complexities, or unable to systematically take them into account. (cited in Fook et al 1997:408)

Some research into expert judgement and decision-making suggests that, in fact, intuitive responses to highly complex situations, not always articulated by the practitioner, may represent some of the most ‘expert’ practice - ‘the paradox of expertise’ (Johnson 1983, cited in Mayhew 1999; Munro 2008).

In studies of expertise within and outside of the social work field, intuitive and analytical (deliberative) reasoning have been found to be important, and most effective when used in combination (Mayhew 1999; Clifford and Williams 2002; Munro 2008). In her review of child protection, Munro addressed the relationship between analytical (deliberative) and intuitive skills in practice, emphasising the importance of reflecting on experience and the application of both types of thinking, over time, to develop expertise:

Analytic skills can be enhanced by formal teaching and reading. Intuitive skills are essentially derived from experience. Experience on its own, however, is not enough. It needs to be allied to reflection – time and attention given to mulling over the experience and learning from it. (Munro 2011b:87)

The role of intuition in effective (expert) decision-making has been a focus of research in relation to decision making that is or needs to be swift, and that can be characterised as decision-making ‘in action’. This is in contrast to reasoning and decision-making

processes based on deliberation and evaluation of information ‘after the event’ (Fook et al 1997; Fook 2000; Munro 2008). Child protection social work practice, and specifically in care proceedings, involves both aspects of decision-making. Decision-making ‘in action’ occurs during encounters with families and other professionals prior to and during the proceedings and decision-making ‘after the event’ occurs in the evaluation of information gathered and the construction of records, reports and written evidence, prior to and during the proceedings. A distinction in practice is likely to be that the decision-making ‘in-action’ may frequently be undertaken by the individual LASW alone, whereas reflection on practice and decision-making about, for example, assessment recommendations may take place in professional supervision with a manager or more senior practitioner. Additionally, the construction of LASW reports and written evidence will be subject to the scrutiny of managers or others operating supervisory and quality assurance processes within the LA.

### **3.3.3 Social workers as ‘experts’ in care proceedings – a theoretical framework for understanding the communication and evaluation of expertise across disciplinary boundaries:**

Theories of expertise that seek to define and identify features of expertise within specific domains, and developmental theories of how domain-specific expertise is acquired, are desirable and useful, particularly in relation to domain-specific education and skills training. However, LASWs in care proceedings are required to communicate their practice in written and oral evidence, to be evaluated by professionals from law – a different discipline to their own. This requires consideration of how professional expertise may be evaluated across disciplinary boundaries, as opposed to a focus on how expertise might develop within a particular domain and/or what the features of

expertise might be within that domain. The potential limitations of developmental or ‘definitional’ theories of expertise for the study became apparent during Phase 1 of the study, and led to consideration of Collins and Evans (2007) theory of expertises, as an appropriate theoretical framework for analysis within the study.

Collins and Evans developed their theoretical framework from their work in the sociology of science and technology (Collins and Evans 2007; Collins and Evans 2015; Caudill et al 2019). Based on the idea that expertises are ‘real’ (not solely attributed or relational), Collins and Evans propose that acquiring any particular expertise is a social process, involving deep socialisation within the particular field of knowledge and practice (domain). They also assert that it is vital to take into account:

...the many different ways of being an expert, the distribution of differing expertises among different groups, and the relations between these groups.  
(Collins and Evans 2007: 4)

Collins and Evans’ approach has been to extend the field of consideration of expertise(s), rather than to replace it. They have not sought to challenge theories of developmental acquisition of expertise in specialist domains, nor have they objected to the use of criterion-based judgment in evaluating expertise (using definitional or features-based theories of expertise). Rather, their approach has been to provide a framework for an understanding of how expertise is communicated and evaluated, and to consider the relevance of expertise and experts in social life. This has included a focus on inter-disciplinarity, in both the development and the application of the theoretical framework (Collins 2007)

The identification of different types of ‘expertises’ in social life, and differing levels of expertise (dependent on the degree of ‘specialist tacit knowledge’) is a distinguishing



feature of Collins and Evans' theory. Additionally, and of particular relevance here is the inclusion in Collins and Evans' theory of Interactional Expertise (IE) and types of 'meta-expertises', which involve expertise in the communication and evaluation of 'other' expertises, across and between domains or disciplines. The types of expertises within Collins and Evans' framework, and how they relate to this study, will now be explained.

Collins and Evans acknowledge developmental approaches to understanding expertise, and in particular Dreyfus and Dreyfus' (1983) five-stage model of acquisition of expertise, as discussed previously (p.79). In their framework, this is related to a category of expertise called 'Contributory Expertise' (CE), which is expertise in 'doing' within a particular domain. Qualified social workers would be recognised as having Contributory Expertise in their direct social work practice with children and families and in their practice within the social work 'professional' domain. The extent of this expertise will be dependent on experience and learning, via deep socialisation (immersion) within the particular knowledge and practices of the social work domain. According to Collins and Evans, regardless of where they are on the novice-expert continuum (Dreyfus and Dreyfus 1983), qualified social workers would be considered to have some Contributory Expertise in social work.

An additional category of expertise contained within Collins and Evans' framework is 'Interactional Expertise' (IE). This can be explained as expertise relating to (but exceeding) skills in inter-disciplinary communication. Inter-disciplinary communication can be achieved in an 'ordinary' sense by the development of 'general' inter-personal communication skills. Interactional Expertise takes this further, drawing on learning 'about' the specific knowledge and practices of a different domain to one's own. This is achieved through a process of socialisation within the language and practices of the

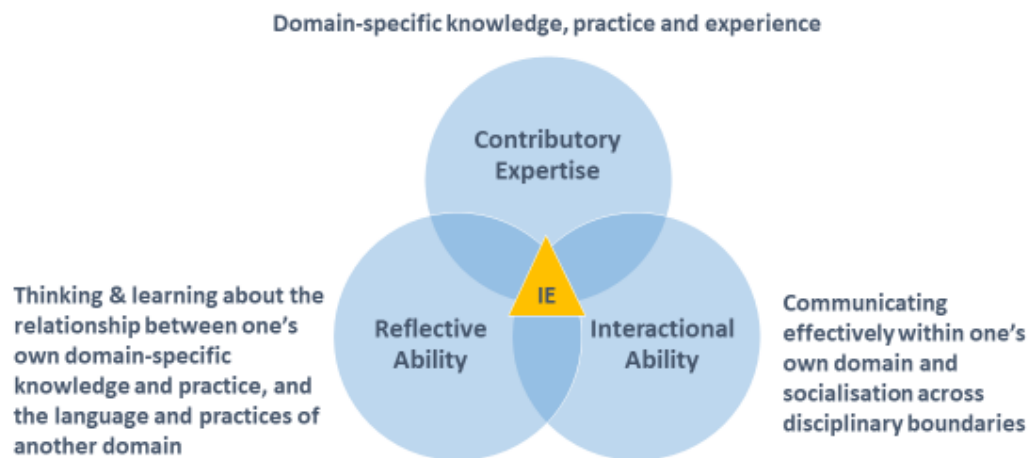
other domain, without having to develop or acquire Contributory Expertise (expertise in ‘doing’) within the other domain. LASWs in care proceedings are required to communicate their written and oral evidence within a legal process, with the aim of persuading a legal audience (lawyers and judges) that they are a credible and reliable professional witness, with expertise in social work. Applying Collins and Evans’ framework, LASWs as professional witnesses should strive for Interactional Expertise within care proceedings, to promote the most effective evaluation of their evidence within the legal domain, by ensuring their communication of social work practice, professional opinion and recommendations can be ‘understood’ by the legal evaluators. In order to communicate their social work practice effectively (expertly), Collins and Evans would say that LASWs must know about and understand the language and practices of the ‘other’ (legal) domain. This is achieved by socialisation within the other domain, to develop knowledge and understanding of the other domain’s language and practices, which in turn can inform and shape the communication of (in this study) social work knowledge and expertise with the legal process, across disciplinary boundaries. Importantly, within this framework, LASWs do not need to acquire Contributory Expertise as practising lawyers or judges, to be able to exercise Interactional Expertise as professional social work witnesses within a legal process.

That said, Collins and Evans’ framework does describe some ‘conditions’ for the realisation of Interactional Expertise. For anyone with Contributory Expertise in a particular domain, Collins and Evans suggest that there will always be the potential for Interactional Expertise to be realised. However, this depends on the engagement of both Interactive Ability (IA) and Reflective Ability (RA). These are not categorised as expertises, rather as ‘dispositions’ which, if engaged, enable effective communication of one’s own domain-specific (Contributory) expertise. Reflective Ability is categorised

as the ability to combine conscious awareness and critical reflection relating to the extent and limits of one's own domain-specific (Contributory) expertise. For some, Reflective Ability will be part of their Contributory Expertise, perhaps even 'taught' within programmes of education and training, with the aim of promoting the development of 'higher' levels of Contributory Expertise. This should be the case for social workers, and any professional who is taught to engage in conscious evaluation of their practice, and the 'translation' of reflection into communication about their practice. Alongside this, Interactive Ability is categorised as the ability and willingness to engage in communication with others from another domain, about one's own domain-specific (Contributory) expertise. In child protection social work, this could relate to an ability and willingness to communicate professional opinions, judgments and practice decisions effectively within, for example, a supervision session with a manager or a child protection case conference. The combination of Interactional Ability and Reflective Ability enables Interactional Expertise to be realised, resulting in the effective and meaningful communication of one's own domain-specific expertise to others from and/or within another domain. To achieve Interactional Expertise in interdisciplinary settings and processes, it follows that the development of Contributory Expertise, Interactional Ability and Reflective Ability must include socialisation in the language and practices of the other relevant domain/s. Only then can Interactional Expertise be realised and result in effective communication of Contributory Expertise across and between domains and disciplinary boundaries.

The relationship between these aspects of Interactional Expertise can be represented figuratively:

**Figure 3. Interactional Expertise (IE) in inter-disciplinary contexts** (using Collins and Evans, 2007)



The application of this within the study, to LASWs as professional witnesses in care proceedings, is provided in Chapter 10 (p.321).

Turning now to the evaluation of domain-specific expertise by those from another domain or discipline. Collins and Evans' theory of expertises offers a theoretical explanation for the social processes involved in the inter-disciplinary evaluation of expertise. This is of relevance to the legal process of care proceedings, where legal professionals make evaluations and reach judgments about the social work evidence presented within cases. Collins and Evans' framework includes a category of 'meta-expertises', within which there are two types. The first is 'external meta-expertise', which is used generally in social life to reach 'every-day' judgments about others, based on commonly held, ubiquitous social 'knowledge', acquired through experiencing and living within one's own society. The second type, and relevant to this study is 'internal meta-expertise', which involves a more specialised evaluation or judgment of domain-specific expertise, for example a person's professional expertise within a particular

discipline. A key aspect of this internal meta-expertise is ‘Technical Connoisseurship’, described as ‘the ability to judge an expertise without being able to practice it’ (Collins and Evans 2007: 59). Technical Connoisseurship is similar to Interactional Expertise, in that it is achieved by socialisation, but only to the extent of understanding the language and practices of the ‘other’ domain, to the level of ‘acquaintanceship’. In other words, in this study it is suggested that judges need to be sufficiently socialised in the language and practices of social work, in order for them to be able to make meaningful evaluations of the expertise (or otherwise) of the LASW, as communicated within their written and oral evidence. In this way, Technical Connoisseurship is a type of expertise in evaluating and reaching informed judgements about a domain, achieved by acquaintanceship with the other domain, rather than immersion within it.

Collins and Evans have developed their theory of expertises over several decades, however the application of their ideas within a socio-legal context is a relatively new endeavour (Caudill et al 2019). The theory has been critiqued during its development, as reflected in the range of published discussions or ‘replies’ between Collins, Evans and those who critique their ideas (for example, Selinger et al 2007; Collins and Evans 2015; Collins and Evans 2016; Collins et al 2016; Atkinson and Morris 2017). Whilst it is not proposed that Collins and Evans’ theory provides a definitive framework, the relevance of this approach here is the focus on expertise as more than ‘doing’ social work and/or law, incorporating interdisciplinary interaction and the role of effective cross-discipline communication in presenting and judging professional expertise. In this way, the theory provides a useful framework for abductive analysis of the data from the sample cases within this study. (Retroductive analysis of the data in relation to structural and system level influences is discussed in Chapter 10, p.313)

### **3.3.4 Social workers as ‘experts’ in care proceedings – a supplementary theoretical framework for understanding ‘expert’ performance as a professional witness:**

Within Phase 1 of the study, it became clear that the ‘impression’ created in written and oral evidence was an important factor for LASW witnesses and those evaluating their evidence. Collins and Evans’ theory of expertises provides a relevant and detailed theoretical framework for analysing both the communication and evaluation of expertise within a legal process. However, a supplementary framework was desirable, given the apparent concerns amongst social work and legal professionals about ‘presentational’ and/or performance aspects of communicating and evaluating evidence, particularly within court hearings. Goffman’s (1959) dramaturgical theory of the presentation of ‘self’ in social life was selected as a supplementary framework for analysis of ‘backstage preparation’ and ‘frontstage presentation’ of expertise in evidence, as contributing to ‘impression management’ by the LASW witness within a legal process.

Goffman’s work as a post-war sociologist focused predominantly on ‘micro-sociological’ aspects of social life and in his work on presentation of the ‘self’ he used conceptual metaphors such as theatre, game and ritual to explore and re-describe social interactions between individuals:

For Goffman, the self is a result of the negotiating process unfolding between a performer presenting a face and an audience receiving and reacting to this presentation of self (Jacobsen and Kristiansen 2015: 4).

Legal processes in general, and courtroom processes in particular, reflect clearly defined (and hierarchical) roles within the legal system (for example judge, advocate, usher, witness). There are also specific behavioural and presentational expectations for the professionals and others involved in court hearings, often expressed as culture and

etiquette, with an emphasis on politeness and deference to authority (Martin 1993; McCaul 2011; Roach Anleu et al 2014). For professional or expert witnesses, the court's evaluation of their evidence may not only affect the outcome of the case, but may also lead to reputational consequences for the professional, in the immediate courtroom environment and beyond. Therefore most (if not all) professional or expert witnesses are likely to seek to create a 'positive' impression via their written and oral evidence.

Goffman describes 'regions' of activity and interaction relating to impression management. The 'front' region is where a person 'performs' to create the desired impression within the 'audience' (frontstage). Preparation for and rehearsal of the elements required for the performance occurs in the 'back' region (backstage). Within impression management processes, the 'audience' (those evaluating the impression given) would usually have no access to this 'back' region, thus allowing the person to 'relax' and depart from the performance and presentation of self designed to create the desired impression (Goffman 1959). Within the study, these regions can relate to the LASW's back region as their place of work, their team (including their own legal representative), and the social work practice and decision-making environment. The front region can relate to the legal process and environment for care proceedings, including court-based discussions, meetings and hearings, within which the social worker is in the role of professional witness, presenting a professional (and it is hoped expert) self. The 'audience' evaluating the evidence and the impression created by the social worker as a witness, includes the lawyers for the other parties in the process, and the judge (or magistrates) as the legal decision maker.

The application of both Collins and Evans (2007) theory of expertises and Goffman's (1959) concept of impression management provides a framework for abductive analysis

of the data and theoretical re-description of findings from the study (Fletcher 2017). As will be explained in the next chapter, this approach appropriately reflects the research questions and aims of the study, and the critical realist philosophy underpinning this research.



## **CHAPTER 4: METHODOLOGY**

### **4.1 Introduction**

This chapter presents the methodological approach, and the research design that was developed to address the research questions. The ethical issues and research governance processes required to conduct research with LA social work and legal staff, Cafcass staff, lawyers in private practice, the judiciary and observations of ‘live’ family court cases are discussed and the (consequent) limitations of the research design and the overall study are acknowledged. Methods for data collection are discussed with reference to the processes involved, the role of the researcher, problems that arose and limitations of the methods used. The approach to, and process of data analysis is also discussed with reference to the theoretical frameworks that were used to focus the analysis. Conclusions are drawn as to the appropriateness of the methodology and methods chosen for the study, with consideration of the overall strengths and limitations of the analysis and findings to be presented in the subsequent chapters.

#### **4.1.1 Research aims and research questions**

The study aimed to explore and analyse the processes and professional interactions involved in the preparation, presentation and evaluation of LASW evidence in care proceedings, focussing on social work and legal understandings of professional expertise. Specifically, the study addressed the following overarching research question:

How is Local Authority Social Worker (LASW) evidence evaluated in care proceedings, particularly in relation to expertise?

The inter-professional nature of care proceedings and in particular the interactions between legal and social work professionals meant that perspectives from both sets of professionals, and the judiciary as the legal decision makers, would be important in addressing this question. I was aware from practice and ongoing contact with the family justice system in an academic role, that there were in-house (LA) and in-proceedings evaluations, both of which involved social work and legal professionals. I was aware of sociological and social work literature relating to expertise, which included the development and acquisition of expertise, features of expertise, and critiques of expertise as a concept within social work practice (see Chapter 3, p.76). Additionally, I was aware of legal literature and research relating to the use of professional experts in care proceedings and legal rules of court procedure and evidence that determined, for example, which professionals could be categorised as ‘expert witnesses’ (see Chapter 2, p.28). With this preliminary knowledge, awareness and experience, I developed three focussed research questions, to answer the over-arching research question and shape the research design:

- 1) How is LASW evidence evaluated ‘in house’, particularly in relation to expertise? *i.e. how is it evaluated by the LASW themselves before and after proceedings, by SW managers ‘signing off’ evidence, and by LA lawyers scrutinising written evidence before it is filed with the court?*
- 2) How is LASW evidence evaluated ‘in proceedings’, particularly in relation to expertise? *- i.e. how is evidence evaluated by the parties’ legal representatives, by the Judge in their questions to witnesses (if any) and in the judgement?*

- 3) To what extent do evaluations of LASW evidence in care proceedings reflect social and legal perspectives and understandings of expertise in professional practice?

Before outlining the research design, the methodological framework for the study is explained.

## **4.2 Methodology – theoretical frameworks**

### **4.2.1 A socio legal perspective:**

Social research relating to legal processes such as care proceedings requires the researcher to consider perspectives on the nature and function of law in society and the social processes involved in the operation of law (Banakar and Travers, 2005).

Research relating to professionals who act as professional or expert witnesses also requires the researcher to consider how the legal system defines types of witnesses, how evidence is constructed and evaluated within legal processes and how professionals from disciplines other than law navigate the legal system. In this study, the focus is on how social work practice and processes interact with the legal process in care proceedings.

Dickens (2008) has explored these interactions in relation to care proceedings, considering the relationship between law and social work, outlining three models of interaction between law and ‘welfare’. The first two models describe how law and social work may dominate each other within the legal process. The model of ‘Law on top’ draws on the work of King and Piper (1995) and the idea that law is a closed, autopoietic, self-referential system, which requires other disciplines within the legal

process to be ‘enslaved’ by the requirements of legal decision making. The alternate model to this, ‘Welfare on top’ is where the legal process is seen to be affected and arguably ‘corrupted’ by the infiltration of normative welfare knowledge (particularly from psychology and psychiatry) into the legal decision making process. This model draws on the work of Donzelot (1980), and considers that normative conceptions of welfare have an influence on legal decision making, reinforcing dominant perceptions and discourses of family, childhood and parenting, which are detrimental to the pursuit of justice within the legal process. The third model draws on the work of James (1992) and White (1998) and questions the uni-directional influences suggested by each of the preceding models. Dickens highlights that interactions of professionals from different disciplines between and across law, result in an ‘exchange’ of influences, with apparent variations at times in the extent of influence (or dominance) of one discipline over the other, resulting in ‘mutually transforming’ effects within each discipline and their processes (Dickens, 2008; see also Dickens and Masson 2016).

Dickens’ models for interactions between law and social work are relevant to the methodology as the research questions focus on interactions between law and social work in care proceedings (in relation to evaluations of LASW evidence). To respond to the research questions as formulated, I needed to assume that legal and social work structures, systems and processes exist, and that the professions of law and social work exist and interact in care proceedings. (An alternative study might seek to address the social construction of the professions of ‘law’ and ‘social work’.) These assumptions inform the ontological and epistemological standpoints for the study, namely the underpinning philosophical approach to the nature of reality, how can we come to know about the topic and what research design will enable this? (Crotty, 1998; Bryman, 2012; McLaughlin, 2012).

#### **4.2.2 Ontological and epistemological standpoints:**

Postmodern philosophical perspectives such as social constructionism and critical theory seek to expose social structures, systems and processes as social constructions, as not objectively 'real'. In these perspectives, the construction of structures and systems creates and sustains aspects of social order and normative ideologies, often to benefit particular groups who are in, or seeking, power and/or control (Denzin and Lincoln 2005; Alvesson and Sköldberg 2009). This study starts from an assumption that law and social work operate as distinct yet interacting structures and systems within society. The research questions acknowledge social structures (the professions of social work and law), systems (child protection and legal) and processes (legal proceedings) within which professional practice occurs.

The research questions do not seek to explore the construction of the social structures, systems and processes involved in care proceedings. The questions are concerned with how social work evidence and professional expertise are understood across these professional groups, within the legal process. The philosophical approach to the nature of reality in this study is to assume that structures and systems such as the professions of law and social work and legal processes are 'real', at least insofar as their effects are experienced as real by the professionals involved. It is assumed that observable phenomena occur within, between and from these structures, and are experienced empirically (Edwards et al 2014). As such, this study assumes a critical realist ontological standpoint.

Critical realism is a philosophy of science and a social theory (Bhaskar, 1998; Collier, 1994). This approach rejects a positivist, deductive conception of science and knowledge, but also critiques idealist, postmodern perspectives as relativist and lacking

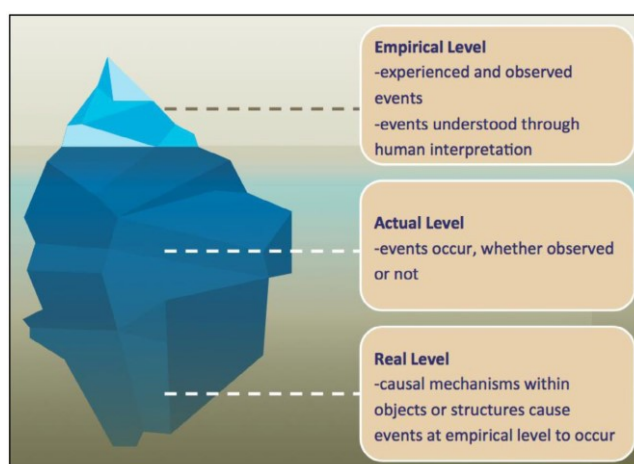
in ontological perspective (Wikgren, 2005). Critical realists focus on mechanisms and tendencies arising from and influenced by social structures and systems, which interact with human agency and interpretation to produce observable (empirical) phenomena (Easton, 2009). Critical realism is an appropriate ontological framework for this study as it acknowledges that, in everyday life, people experience and operate within social structures, systems and processes that are experienced and accepted by them and others as real. These social structures are said to be real because they affect behaviour and make a difference – they have influential effects, although these are not necessarily predictable nor do they reflect a direct relationship between cause and effect as viewed within positivist approaches (Alvesson and Skoldberg 2009).

The effects of these structures are experienced empirically because of generative, causal mechanisms operating ‘underneath’ the observable phenomena (Danermark et al, 2019). A critical realist approach seeks to identify how and in what ways these mechanisms shape and influence events and discourse, as they are experienced in the social world (McEvoy and Richards 2003; Meyer and Lunnay 2012). Critical realism aims to enable understanding and explanatory critique of the social world, and to provide the potential for social change. This can be achieved by engagement with structures and systems to influence the generative mechanisms and thereby the effects and the experiences of people within them (Bhaskar 1998; Bhaskar 2008; Alvesson and Sköldberg 2009, Edwards et al 2014). It can be theorised that the practices and experiences of lawyers and social workers in evaluating LASW evidence, may be influenced (similarly and/or differently) by generative mechanisms. These influences may include economic, political, policy and professional practice influences on ‘everyday’ legal and social work practice in care proceedings. Examples would include the twenty-six week legal time limit for the completion of cases (Children and Families

Act 2014, s.14(2)) and the legal requirement that any use of independent experts in cases must be ‘necessary’ (Children and Families Act 2014, s.16(6)). Historical developments and societal expectations about child protection and social hierarchies of professions (as discussed in Chapters 2 and 3) will also affect the development of structures and processes of care proceedings, and how lawyers and social workers operate within them, within a context of time, place and agency. In this way, the structures, cultures and practices of the professions of law and social work, along with social and legal conceptions of family, childhood, parenting and ‘expertise’ may operate as generative mechanisms or tendencies, with observable effects in practice and in the interactions between professionals in care proceedings.

Generative mechanisms are considered to operate and influence experience through an interplay between social structures, mechanisms, context and human agency, across strata or levels of ‘reality’ (Houston 2010). Bhaskar (2008) uses the terms Empirical, Actual and Real to describe these levels, and Fletcher (2017) depicts them in a simplified model:

**Figure 4.1: Critical Realism (Fletcher 2017: 183)**



Within the epistemological approach for the study, human experiences and interpretations of the effects of these processes are the empirical data. Analysis is an interpretive exploration of the observable phenomena and/or people's experiences, theorising about the mechanisms (arising from social structures) that have caused things to appear as they do, including over time. A critical realist approach to data analysis uses theoretic re-description of empirical data (Fletcher 2017), applying abductive and retroductive analysis within an interpretive approach (McEvoy and Richards 2003; Meyer and Lunnay 2012).

Critical realism is critiqued both in relation to the theory and its application (see, for example Alvesson and Sköldberg, 2009) and, as with other methodological approaches, critical realist theorists are not an homogenous group. Interpretations and applications of critical realism include a continuum of views and positions that may be more or less aligned with 'moderate' constructivism and 'social' realism (Elder-Vass 2012). By adopting a critical realist approach for the study, I do not reject other methodologies within social research as inappropriate, *per se*. Rather, I considered that for a study of inter-professional interactions within established social structures and systems, critical realism offered an appropriate ontological acceptance of these social structures and systems, reflecting the lived experience of professionals (and others) within them. Adopting a critical realist approach also enabled an interpretive epistemology, with qualitative interpretation of observable phenomena, individual experiences and the effects of time and history on the development of social structures and their mechanisms (Roberts 2014). This provides for a relativist, interpretative approach to how we can come to know and understand people's experiences of and within structures and processes, as well as the underlying influences on them. In this way, critical realism provides and allows for a realist ontology and a relativist, interpretive



epistemological approach to empirical research (McEvoy and Richards 2003) and is an appropriate methodological framework for the study of professional experiences and interactions within care proceedings.

Adopting this philosophical approach, the evaluation of LASW evidence within care proceedings can and should be undertaken using qualitative methods. In this study a range of integrated qualitative methods were chosen, incorporating a ‘triangulation’ of methods for data collection (Moran-Ellis et al 2006; Bryman 2012). This enabled, within the limits of the study, a rounded view of the experiences and perspectives of specific human agents (from social work and law) who interact in the processes of care proceedings.

### **4.3 Research design – an overview**

#### **4.3.1 Early research decisions:**

Early decisions about the research design included consideration of the scope of the study, particularly given the limitations of time and a single researcher. It was decided the study would focus on one geographical area, served by one family court centre (the ‘study court’). There would be a focus on two Local Authority Children’s Services Departments, linked to the chosen family court. This was not in anticipation of comparative research between the LAs, rather choosing two (rather than more) LAs would enable depth of analysis in line with the methodological approach, whilst containing the study within resource limitations. Arguably, more depth may have been achieved by using one rather than two LAs, however it was anticipated that there may

be challenges in gaining access to the sample cases required for Phase 2, and thus two LAs was a preferable option, to enhance the opportunities for successful sampling.

#### **4.3.2 Development of the research design:**

In qualitative research, a wide range of methods and research designs are possible. The rationale for decisions about methods and design should ensure that the chosen methods are appropriate for the methodological approach, and to address the research questions (Bryman 2012; Silverman 2013). This section explains the development of the research design and a summary diagram of the study is provided (Figure 4.2, p.108). The chosen methods and sampling decisions in the study are discussed in more detail in the next section.

To address the research questions, it was necessary to gather data about the range of processes involved in the production, presentation and evaluation of LASW evidence, and the views and experiences of professionals from each perspective (social work and law). I was aware of the processes involved in evaluating LASW evidence both ‘in house’ by LAs and ‘in proceedings’ by CGs, lawyers and the judge (or magistrates). I also knew that to consider all aspects of evaluations of LASWs’ evidence in care proceedings, I would need a focus on contested hearings, where LASWs give oral evidence, and where their evidence is explicitly evaluated by others including the legal decision maker. Whilst my own experience assisted with the research design, it was important not to rely on this ‘insider’ knowledge (Corbin Dwyer and Buckle, 2009; Berger, 2015), due to variations in practice across locations and over time. Consequently, the research design included Phase 1, to explore and identify the current ‘in house’ evaluation processes within the study LAs, and the ‘in proceedings’

evaluations processes undertaken by legal professionals and Cafcass during care proceedings in the study area.

The aim was to provide contextual data as to the processes and practices in care proceedings in the study court, and in the two identified LAs. This would be achieved by gathering qualitative data about the care proceedings process from key professional informants working in the study court and from both LAs. Interviews and/or focus groups were appropriate choices of methods, reflecting the interpretive epistemological approach within the methodology (Bryman, 2012; McLaughlin, 2012; Silverman 2013). To gain an additional perspective, an ethnographic approach (Brewer, 2000) was also included, involving two ‘example’ cases, one from each of the identified local authorities. The cases were followed from the Legal Planning Meeting to the conclusion of the case at Issues Resolution Hearing or Final Hearing. The rationale was to provide a fuller picture of the overall processes for the production and evaluation of LASW evidence in each LA.

Qualitative research aims for understanding of the social world and social processes through analysis and interpretation of people’s lived experiences, both reported and observed, and this may include elements of ethnography (Bryman, 2012). An ethnographic approach often involves fieldwork within a particular setting, and methods focussing on people’s practices (behaviour), interactions and lived experiences ‘in situ’ and in ‘real time’, with the researcher becoming (to a greater or lesser degree) part of the experience (Brewer, 2000; Hammersley and Atkinson, 2007). A distinction between ‘ethnography’ as an approach and other qualitative research methods is illustrated by distinguishing the methods used in Phase 1 of the study. The Phase 1 interviews with LA managers, the Cafcass manager and the four focus groups were conducted to gather views and experiences of key professionals, to provide contextual

information about practice and processes in the study area. These professionals were not observed in practice situations, and their views about individual LAs or cases were not discussed. The aim with the two ‘example’ cases in Phase 1 was to provide specific information about professional practice in the two LAs, relating to the preparation, presentation and evaluation of LASW evidence. The ethnographic methods used included observations of LA meetings and court hearings, as well as case specific interviews with the LASW and the LA lawyer for the case, and analysis of the initial LASW written evidence in the cases. This ethnographic approach aimed to provide an account of practice and process in each LA, encompassing the perspectives of the LASW, the LA lawyer and the researcher, for each case (Brewer, 2000). The individual elements of this ethnographic approach (interviews, observations and analysis of written evidence) are discussed later in the chapter.

Phase 2 of the study was designed to enable an analysis of a sample of cases that were listed as contested at FH. Uncontested cases would involve ‘in house’ (LA) and ‘in proceedings’ (CG and lawyer) evaluation processes of written evidence, however they would not necessarily include evaluation of LASW oral evidence and cross-examination, which was considered an important aspect of the study. The inclusion of contested cases enabled analysis of the focused legal and judicial scrutiny and evaluation of LASWs’ written and oral evidence that occurs within contested proceedings. It was considered whether to follow all cases in Phase 2 from LPM to conclusion, as in the Phase 1 cases. However, it is not possible to know in advance whether cases will be actively contested or not. Care proceedings may, and frequently do, conclude without the LASW evidence being ‘actively’ contested at any stage (Masson et al, 2008; Pearce et al, 2011; Masson et al 2013). Whilst there may be contested hearings at an earlier stage in care proceedings, these generally have a

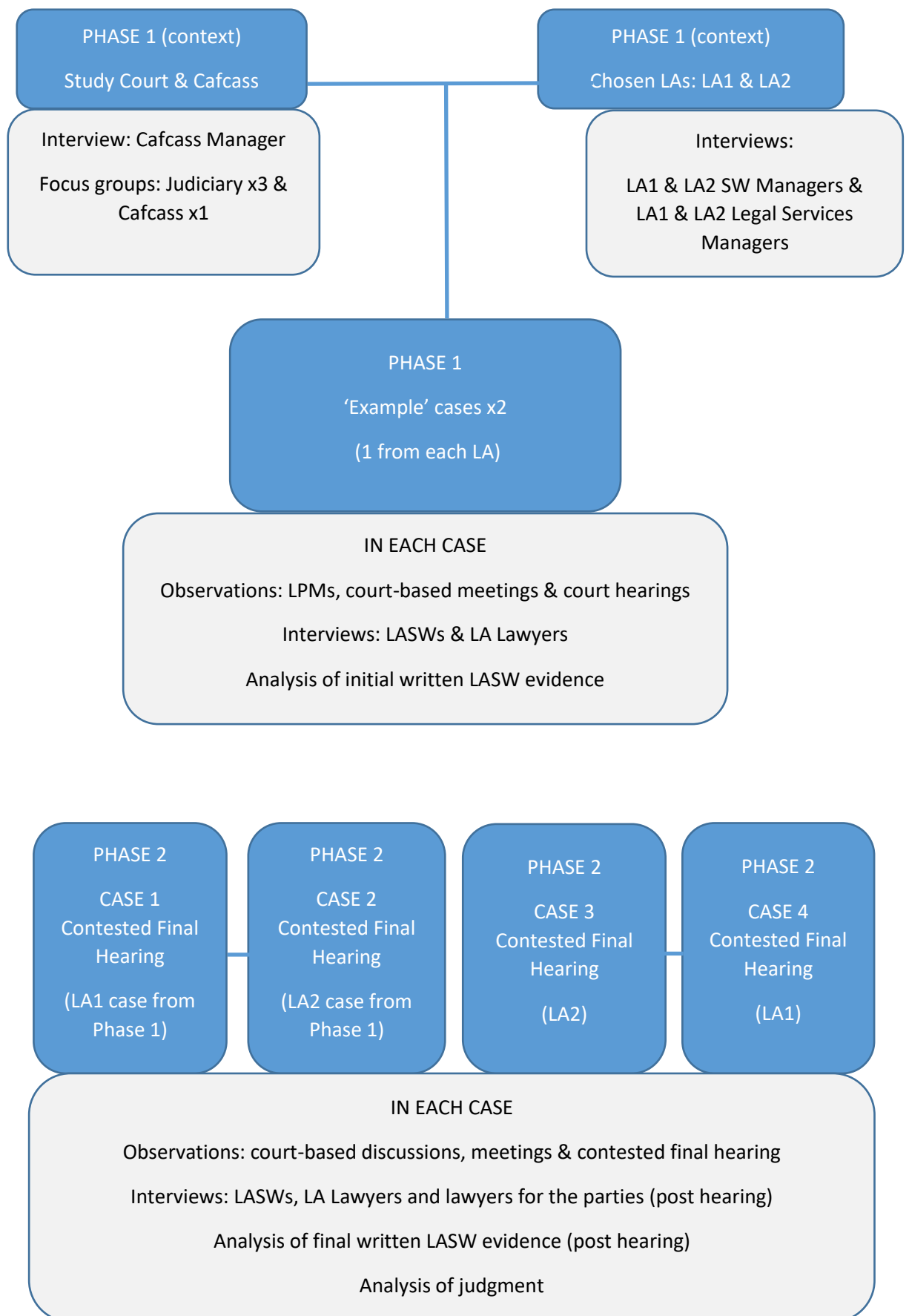
narrower evidential focus than contested FHs. A sample of contested FHs would allow a focus on legal and judicial evaluations of the LASW evidence overall, including welfare disposal aspects of the LASWs' evidence, such as the proposed LA final care plan, in addition to earlier threshold decisions. It should also be noted that some cases listed for a contested final hearing at IRH will subsequently become 'agreed' before or at the FH. This occurred in two cases that were identified for inclusion in the sample.

These factors meant that the option of following Phase 2 cases from LPM to conclusion risked too few contested FHs in the final sample. Therefore, in Phase 2, the focus was on cases identified at the Issues Resolution Hearing to be listed for a contested FH. It was decided that should the example cases in Phase 1 become contested, then these would be included in the Phase 2 sample. In the event both example cases became contested in Phase 2, as reflected in Figure 4.2 (p.108).

For Phase 2, a combination of methods was required to address the research questions, within an ethnographic approach. The methods used included: observations of court-based meetings and the contested FHs; case specific interviews with the LASWs and lawyers in the sample cases; analysis of final written LASW evidence and analysis of the judgment in each case. In Phase 2, the range of interviews included the views and experiences of the lawyers for all parties. The decision not to request interviews with the magistrates or judges in the cases is discussed below in the section on ethics.

Interviews with the CG in each case were also not included in the study design; this decision is discussed at p.136. These decisions required and reflected a process of careful consideration of the whole research design, balancing the need to address the research questions against available resources, ethics and the required research governance processes (see Appendix E, p.362). The overall structure of the research design is summarised in Figure 4.2, below.

**Figure 4.2 Summary of Research Design**



#### **4.4 Research design: methods and sampling decisions**

Sampling decisions should involve consideration of appropriate and desirable breadth and depth of data collection to address the research questions within the time and resources available. Logistical and access issues within the research design are also important considerations. The overall approach to sampling in this study was purposive sampling (Bryman, 2012; Silverman, 2013); a type of non-probability sampling relying on strategies informed by the research questions. Purposive sampling aims to optimise data collection relevant to the research questions and enable a meaningful focus for the study, particularly where there are limits to the scale and scope of the study due to resources or other reasons.

Early sampling decisions in this study included the use of one family court centre as the ‘study court’ and the identification of two LAs linked to the particular family court. The choice of the family court was informed by a convenience approach to sampling (Bryman, 2012) including consideration of resources, access issues and required permissions (I was local to the chosen family court and known to the judiciary working there – this is discussed further at p.121). The choice of the two LAs was both purposive and based on convenience. From the range of LAs linked to the particular family court, I was aware that larger LAs tended to have more care proceedings cases than the smaller LAs in the area. Two of the larger LAs were chosen based on existing contacts I had within their social work and legal departments. However as discussed later at p.123, one LA declined to be involved and so a third, similar LA (where I also had contacts) was approached. The use of local knowledge to inform sampling decisions reflected a degree of ‘insider’ knowledge in my role as researcher in this study (Corbin Dwyer and Buckle, 2009), which was used pragmatically to enable these early, purposive and convenience sampling decisions. Further sampling decisions were

then required for each element of the research design. The rationale for the methods and the sampling decisions is explained with reference to each phase of the study.

#### **4.4.1 Phase 1 methods:**

Purposive sampling in Phase 1 involved identifying the most relevant professional groups to include in the study and the most effective ways to gather sufficient data from them, ensuring the feasibility of the study in terms of time and other resources (Bryman, 2012; Silverman, 2013). My knowledge and experience of care proceedings meant that I was aware of the key professional groups. Choices were made during the research design process about which methods would be used with these different groups. Thus the sampling decisions in this Phase of the study related to the chosen methods as well as the scope and scale of the study.

##### ***4.4.1(a) Interviews and Focus Groups (contextual data):***

Key senior staff from the social work and legal departments were identified in the chosen LAs, based on who could reasonably be expected to provide an overview of the processes and practices involved in the preparation, presentation and ‘in house’ evaluation of LASW evidence. Individual interviews were requested with one social work manager and one legal department manager in each LA. I recognised that these professionals were potential ‘gatekeepers’ for each LA, who potentially could influence the ease or difficulty of access for the remainder of the study (Clark 2010). (This issue and issues relating to identification and access to interviewees are discussed at p.121).

Interviews are a common method used in qualitative and quantitative research, where the views and experiences of individuals, in relation the research questions, are the



desired data for analysis (McLaughlin, 2012). In qualitative studies, participant responses are analysed using interpretive methods, rather than measured quantitatively. The degree of structure in research interviews reflects the aims and methodological approach of the study. In qualitative research, interviews can vary in the extent to which they are structured so that, to a greater or lesser degree, they limit the interviewee's options to deviate from the interviewer's schedule of questions or expand upon areas of interest to them within the interview. (Brewer, 2000; Hammersley and Atkinson 2007; Bryman, 2012; McLaughlin, 2012). In this study, semi-structured interviews were preferred, to enable a focus on the research questions, whilst also allowing flexibility for the interviewee in their responses. This type of interview allows for unexpected insights from interviewees, whilst the use of an interview schedule enables the interviewer to retain some control of the data collection process and manage the 'progress' of the interview through the areas to be covered (Bryman, 2012).

The semi-structured interviews required an interview schedule of relatively open questions, designed to orientate the participant in the topic area and invite their views and experiences on particular aspects of the research questions, without overly restricting their responses (McLaughlin, 2012). A Phase 1 interview schedule was developed to reflect the general, non-case specific focus of these early interviews (Appendix H. p.366). The interview schedule focussed on exploring with the professionals the processes in their organisation for evaluating LASW evidence, how they might recognise good LASW evidence, and then specifically what LASW evidence demonstrating professional expertise might 'look like'. The interview schedules and focus group schedules in Phase 1 were very similar in content and structure, to promote consistency in the data collection process, across the professional groups. At the same time, the relatively open structure of the schedules reflected the

semi-structured design of the interviews, allowing for variation in the content of responses from the participants. The interviews were audio recorded and transcribed. The exception to this was an interview with a LA lawyer in Phase 1 (and a telephone interview with a lawyer in Phase 2), where they requested that the interview was not audio-recorded. In these cases, written notes were taken at the time of the interviews. All interviews were anonymised the point of transcription.

Focus groups were the chosen method in Phase 1 to gather contextual data from a range of social work and professionals involved in evaluating evidence in-proceedings in the study area. (An interview was conducted with the Cafcass manager as there was only one manager for the study area, so a focus group was not possible.) The focus groups were: Cafcass Family Court Advisers working as CGs in the study area, and then three groups from the different levels of the judiciary in the chosen family court (magistrates, DJs and CJs). Focus groups are a form of group interview where a discussion is encouraged between participants, with the researcher as facilitator (Morgan 1993; Bryman, 2012; McLaughlin, 2012; Silverman, 2013). They are an appropriate method in qualitative research where eliciting a range of perspectives, and exploration and capture of commonalities and differences between participants within a group discussion may be important or helpful. The method allows for a number of participants' views to be gathered at the same time, thus reducing the amount of time required and streamlining the logistical arrangements for this aspect of data collection. The focus groups and the interview with the Cafcass manager were audio-recorded and then transcribed. The data were anonymised at the point of transcription.

In thinking through the research design, it was considered whether to interview the magistrates or judge, and the Children's Guardian, in the Phase 2 sample cases. This would have strengthened the case specific analysis of the evaluations of the LASWs'

evidence. However, in relation to the CGs, the concern was the potential numbers of interviews with lawyers for the parties in the sample cases, and the need to place some resource and time limits around the scope of the data collection. It was decided to prioritise the case specific interviews with lawyers over the CGs in each sample case, to ensure the feasibility of the study. This also acknowledged a focus in the research questions on exploring legal evaluations of LASWs' evidence within proceedings. For this reason, a focus group method was used to gather contextual data from CGs in the study area during Phase 1. This is a potential limitation of the study, as discussed at p.323.

In relation to the magistrates or judge, it was considered that requesting a case specific interview after a contested FH would present ethical challenges for the judicial officer, and possibly legal issues if the case were to be appealed. There was a risk of refusal of general permission to seek judicial interviews, and/or refusal by individual judicial officers to take part in case specific interviews within the study. Within the research design, it was planned that interactions between the magistrates or judge and the LASW would be part of the court-based observations in each case, providing observational data. It would also be possible to analyse the judgment at the end of each contested hearing, which would likely provide some (albeit limited) data about the evaluation of the LASW evidence by the legal decision makers. Accordingly, it was decided to conduct judicial focus groups in Phase 1, to gather contextual data from the legal decision makers, rather than pursue case specific interviews.

The rationale for separate focus groups for different levels of the family court judiciary related to the potential for participants to defer to others in a focus group discussion, within a perceived or actual hierarchy of authority (Albrecht et al, 1993). The judicial system has a clear, structural hierarchy, which it was felt would likely influence the

contributions of participants if there were ‘mixed’ judicial focus groups. Therefore, three judicial focus groups were held: for magistrates, for DJs and for CJs. Judges of the High Court also hear care proceedings, however this occurs less frequently than with the judicial groups represented in the study (President of the Family Division 2014). In view of the limitations on time and resources it was decided to limit the judicial focus groups to those listed above.

For each of the four focus groups, it was decided to aim for 4-6 participants. This was based on literature relating to the focus group as a method (Morgan, 1993; Bryman, 2012; McLaughlin, 2012; Silverman, 2013) which highlights that a minimum number of participants promotes the likelihood that the focus group functions as a group discussion. A maximum number of participants is also advised to give all participants (who wish to) the opportunity to contribute, within the time constraints of the discussion. Recruitment to the focus groups is discussed below (p.124).

For each of the focus groups, a schedule of discussion ‘questions’ was prepared, which were the same for each focus group and also mirrored the interview schedules discussed above (Appendices I. and J., p.367 and p.368).

#### ***4.4.1(b) ‘Example’ cases – Ethnography:***

In Phase 1, two example cases (one from each LA) were identified during the observations of the LPMs in each LA. This introduced an ethnographic approach to the research design, with a combination of methods including observations, interviews and analysis of documents. Ethnographic methods allow for degrees of involvement with the research site and with those participating in the study (Brewer, 2000; McLaughlin, 2012), with the extent of involvement determined by what is required to address the

research questions. In the extreme, this would entail the researcher living and working within the study 'community', participating in their practices and processes. For this study, such a level of 'immersion' was both impractical in terms of time and resources and unnecessary to address the research questions as formulated.

From my involvement in other research, I had experience of conducting research interviews and analysing documents (McLaughlin et al, 2013), and facilitating focus groups (Edmondson et al, 2013). I had prior experience of conducting observations, but not as a researcher. For example, I had observed and analysed interactions between children and family members in my professional practice in social work and as a CG, and I had observed and assessed student SWs' professional practice in the role of Practice Educator. I had extensive experience of care proceedings, although not as a researcher. To address this, during the development of the research design and prior to the ethical approval process, I arranged to spend a week observing care proceedings hearings at the family court chosen for my study. The aims were to re-orientate myself in current practices, to explore the role of 'researcher as observer' (McLaughlin, 2012) in advance of data collection, and to consider practical and logistical issues for the research design. This preparatory work involved 'sitting in' with various judges in a range of care proceedings cases where oral evidence from LASWs was being heard. I was able to complete these observations with the permission of the Designated Family Judge, and with the agreement and co-operation of the judges in the cases. Part of the agreement was that I would not collect data during the observations and I would not take notes during the hearings. In each case, prior to the start of the hearing, the judge asked the parties if they had any objection to an observer being present (there were none). After each observation I recorded my thoughts about process and logistical

issues for the subsequent study. The key issues that arose, and which were incorporated into the research design were:

- The need for an appropriate mechanism for requesting agreement from family members to my presence in court hearings.
- Lack of predictability in identifying which cases would be fully contested, with oral evidence from the LASW, even if they were listed as such.
- Positioning of the researcher in the courtroom for the purposes of observation. During these preliminary observations, I mainly sat with the judge on the bench, looking down on the courtroom. In one case, I sat at the back of the courtroom, behind the LASW. The latter position seemed preferable for the study, to observe the interactions between the lawyers, the judge and the LASW during oral evidence. It was an unobtrusive position from which to observe the hearings, which is often preferable for the researcher in ethnographic methods (Brewer, 2000), and which seemed more appropriate ethically in relation to the parents in the cases.
- The focus of observation fieldnotes – structure and process.

Decisions about what to observe, who to interview and how much written evidence to review in the study were guided by these preparatory observations of care proceedings. In addition, Phase 1 data from the interviews with the LA social work managers and Legal Services managers, were used iteratively to guide decisions about which aspects of the court based processes to observe (in both phases of the study). In relation to the example cases in Phase 1, it was decided to observe LPMs to provide data about the LA's in-house decision-making process leading up to issuing care proceedings, and to assist with the selection of the two example cases. It was also decided to observe court-based meetings involving the LASW in each case, including advocates meetings or

other professionals' meetings prior to or immediately after court hearings, as well as the actual court hearings. Other meetings and events could have been included in the observations, such as supervision meetings between the LASW and their team manager and 'peer' discussions within social work teams, however resource and time constraints limited what could be included in the fieldwork. Consequently, after the LPM, priority for observations was given to court based meetings and the court hearings as settings where focussed evaluation of the LASWs' evidence would most likely occur, involving both social work and legal professionals.

Observations of LPMs provided an opportunity to observe the professional discussions about the quality of the LASW's written assessments (as expressed in the meetings), as a precursor to the preparation of their written evidence. In one LA, I observed a 'LPM panel meeting' comprising several LPMs in succession. From this, the LA social work manager and the LA senior lawyer suggested one case that would be going into care proceedings, for inclusion in the study. In the second LA, I observed a 'Resource Panel', which discussed a range of types of cases, including those where care proceedings were being considered. From this, the LA social work manager suggested a case where a LPM was recommended, and where the expected outcome would be a decision to issue proceedings, for inclusion in the study.

The other two elements of the ethnographic approach in the example cases were semi-structured interviews with the LASWs at the start of each case, and analysis of their initial written evidence. The interviews were case specific, as reflected in the interview schedule (Appendix K. p.369). In accordance with the research governance requirements that I did not hold any court documentation as part of the data collection process, I was required to review and record notes about the initial written evidence on LA premises. The review of the written evidence included a focus on theoretically

informed features of domain-specific professional expertise as discussed in Chapter 3 (p.76). These included: LASWs' credentials and length of practice experience (Dreyfus and Dreyfus, 1986), the explicit use of social work knowledge demonstrated by references to theory and research, and explicit references to relevant legal knowledge such as case law (Fook et al, 2000). I also paid attention to the presentation of the written evidence such as appropriate grammar and typographical errors as an indicator of 'professionalism' as a feature of expertise (Fook et al, 2000).

#### **4.4.2 Phase 2 - ethnographic methods and sampling:**

The desired number of sample cases in Phase 2 was informed by the range of methods to be used, the consequent time and resource commitment for data collection and analysis in each case, and the balance between a meaningful amount of data to address the research questions and the feasibility of the study (Baker and Edwards, 2012). It was planned that the sample of contested cases for Phase 2 would be identified via the LA senior lawyers, who would be aware of cases listed as contested at the Issues Resolution Hearing (IRH). The intention was for sampling of the cases to be purposive, with preferred criteria including cases across the levels of the judiciary; a range of ages of children/sibling groups; a range of length of experience of the LASWs. Also included in the criteria was that the 'contest' related to aspects of the LASW evidence, such as the overall proposed care plan, the LASW parenting or kinship assessment, and/or the LASW assessment of the children's needs. Both cases from Phase 1 became contested and were included. Additionally whilst four more cases were requested during Phase 2, and a number of other possible cases were identified, only two more cases were successfully included in the sample. This is a potential limitation of the study, as discussed at p.135.



The methods for Phase 2 included observations of court-based meetings and the FHs. Post FH semi structured interviews were conducted with the LASWs, the LA lawyer with conduct of the FH and the lawyers for the parties. Analysis of the final LASW written evidence and analysis of the judgment in the case were also included in the methods for Phase 2. It was possible to anticipate the numbers of interviews with LASWs and with LA lawyers based on the number of cases, however the number of lawyers for the parties in each case was likely to vary and so only estimates of this were possible at this stage. Likewise, the number of observations of court-based meetings, the number of days that FHs were listed, and the actual length of hearings were likely to vary, influencing the estimated time and resources required. (It was decided to include only contested FHs that were listed up to a maximum of 5 days, to exclude unusually long hearings.) Appendix L. (p.370) sets out the planned Phase 2 sampling and what was achieved.

## **4.5 Access, ethics and research governance**

Care proceedings are heard ‘in private’ and are usually closed to those not directly involved as a party in the case to preserve children’s right to privacy, as provided for within the legal framework (CA 1989 s.97: ‘Privacy for children involved in certain proceedings’). There is an ongoing debate about whether care proceedings should be more open and transparent, to enable improved public understanding of the issues and outcomes in such cases (Munby 2014; Doughty et al 2017). Currently, all information in care and related proceedings, including documentation within the proceedings, is subject to legal restrictions about communication to others who are not involved in the proceedings, including for the purposes of research (Rule 12.73 and PD 12G, FPR 2010).

For researchers wishing to study practice, processes and cases in the family court, it is essential to ensure that access to legal proceedings and any information relating to proceedings is achieved lawfully. The study design should also reflect recognised ethical research standards (for example, BSA 2017; ESRC 2015; SLSA 2009). Ethical principles underpinning socio-legal research should reflect the accepted principles of beneficence, non-maleficence and justice (Boon, 2005). The research should be of some benefit, it should seek to ‘do no harm’ to the children, family members or professionals involved in the cases, and it should not interfere with the legal process or outcome. Accordingly, and reflecting the closed nature of care proceedings, specific permissions and research governance processes are required to conduct ethical research involving cases in the family court.

For this study, access to professionals in several different organisations was required, as well as access to meetings, court hearings and selected documentation in ‘live’ care

proceedings cases in the family court. This entailed a number of ethical approval and research governance processes, detailed in Appendix E. (p.362). In advance of these applications, support for the project was requested from stakeholders in the study area: the local Designated Family Judge (DFJ), the local Cafcass Head of Service in the study area, the Chair of the Local Family Justice Board, the Head or Deputy Heads of Legal Services for each LA approached, and the Strategic Lead for Social Work in each LA. Whilst these professionals would not be determining the permissions for the study, they were key potential gatekeepers for the research and as such, it was appropriate to inform them of the intended study and to request their support, if needed. This aspect of the process drew on my own professional networks and existing positive relationships with local stakeholders and served to 'smooth the way' for access, once the appropriate approvals and permissions were acquired.

#### **4.5.1 Ethical and research governance issues:**

The various permission, approval and research governance applications were developed using the University of Bristol LREC ethical approval application documentation. This had been a comprehensive, robust process and in the subsequent research governance applications, very few queries were raised prior to approval. In the HMCTS Data Access Panel (DAP) application, Ministry of Justice staff raised a query at the initial screening stage, about the research study information to be given to family members. I had designed an information sheet for family members involved in the Phase 2 sample cases (Appendix M. p.371). The question raised related to the method and timing for giving this information to family members. I was able to clarify, and it was considered acceptable, that once cases were identified, I would telephone the legal representatives

for the parents and explain the study, providing them with the information sheet electronically. This would allow the lawyers to discuss the study with the family members and ask if they agreed to the observation of the hearing. The rationale was to ensure an ethical approach that recognised the seriousness and sensitivity of the cases for the family members, and to ensure that family members were able to agree or disagree to the observation, after discussion with their legal representative. In the event, there was one case where a family member disagreed with the proposed observation. The lawyer for the family member communicated this to me prior to the hearing date and therefore the case was not included in the sample and observations did not take place.

The formal ethical approval and research governance processes ensured that the required permissions were in place to proceed with the study, however progressing the study also required careful negotiations to secure access to cases and the professionals involved. The role of researcher in care proceedings cases entails sensitivity to the emotionally charged nature of court hearings, particularly contested FHs, which can be distressing and life changing for the children and family members concerned.

Demonstrating the potential benefits of the research study to families, professionals and the family justice system was important in negotiating access (Boon, 2005), as was explaining the safeguards in the study design in relation to confidentiality and anonymity. These and other aspects of the study were communicated in the research study information summary (Appendix F. p.363). Trust in the researcher is also key to enabling access (Blix and Wettergen 2015), and external validation of the study and the researcher was able to be demonstrated by the various approvals that had been acquired. This was also supported by my existing professional relationships with colleagues in the LAs and others in the family justice system in the study area, built up over many years

of practice and continued professional contact as an academic. I was known to the ‘gatekeepers’ and to many of the professionals involved in the study, and I was able to rely on a positive professional reputation with those not personally known. It is likely that this ‘speeded up’ some of the negotiations for access to cases and to professionals (Berger, 2015). A potential disadvantage of familiarity was a tendency at times for participants to attempt to include me in professional discussions, particularly during observations of meetings.

Issues that arose in relation to the permissions and research governance processes included a refusal from one of the LAs approached. Although the support of the Head of Legal Services and the Strategic Lead for social work had been secured, a new Strategic Lead was appointed just prior to submission of the research governance application, and the application was refused on the basis of the release time required for the LASWs to be interviewed. I was aware at the time that the LA concerned was embarking on a major change and improvement programme and I considered it likely that the new Strategic Lead for social work would not want a research focus on professional practice at that time. Fortunately, I was able to contact the relevant senior staff in another LA within the study area and they agreed to support a research governance application.

Approval of the project by the President of the Family Division and HMCTS meant that I had the required permission to observe meetings relating to the proceedings, court hearings and to access court documentation. Nonetheless, progressing the study would depend on whether the legal professionals in the selected cases were willing or reluctant to be involved (Hammersley and Atkinson, 2007). For most of the lawyers in the study, information about these approvals within the participant information sheet was sufficient for them to agree to my presence as a researcher in these various processes.

However, in one of the Phase 2 cases there were some concerns from lawyers about the request for interviews. The take up of interviews after the FH from the lawyers in this case was very low (only one interview was secured, with the mother's barrister, see Appendix T. p.378). This is discussed further, below (p.130).

## **4.6 The data collection process**

### **4.6.1 Phase 1 data:**

Interviews with the LA social work and Legal Services managers, Cafcass service manager and the four focus groups were conducted as planned, without any issues. Direct contact was made to arrange interviews with the LA staff and the Cafcass service manager. As these managers were potential 'gatekeepers' in relation to facilitating subsequent access to professionals and cases (Brewer, 2000), I was careful to explain the study fully, answering any queries and emphasising the ethical and research governance safeguards for staff and for the children and families whose cases might be selected. For the judicial focus groups, court administration staff circulated the participant information sheet amongst the different levels of judges, and participants self-selected, up to the maximum number for each focus group. The Cafcass focus group was arranged by the service manager, by circulating the participant information sheet to all CGs in the study area. Participants for this group also self-selected, up to the maximum number for the focus group. The interview and focus group discussions remained 'on topic' and the areas for discussion were addressed in each.

The focus groups provided contextual information about how the judiciary and CGs professionals evaluate LASWs' evidence in the study area, and the LA managers

provided information about the processes for in-house evaluations of LASWs' evidence in the 2 LAs. These data helped to inform decisions about which aspects of the process to select for observation in the sample cases.

#### **4.6.2 Phases 1 and 2 sample cases – ethnographic data:**

##### **4.6.2 (a) *Accessing cases***

Access to the two example cases in Phase 1 has been discussed (p. 114). During Phase 2, three cases were identified that were not subsequently included in the sample. In one potential case, a family member did not want the observations to go ahead. In two other potential cases, the matters were listed for contested hearings and preparations for observations and interviews were made, but the cases became 'agreed' on the morning of the first day of the FH. One of these cases was before magistrates and the other was before a DJ. It had been hoped that the Phase 2 sample of cases would include the different levels of the judiciary, and this request was made of the LAs identifying the cases. In the end, the cases identified within the timescale for the field work that became part of the sample were all heard by CJs (this includes Cases 1 and 2 from Phase 1). This lack of variation in the different judicial levels hearing the sample cases introduced a potential limitation in the implementation of the study design.

The original research design included four to six cases in the Phase 2 sample. Towards the end of the fieldwork period, the LAs reported to me that fewer cases were being listed for contested FHs. Despite continuing contact with the LAs to check on the identification of further cases, none were forthcoming. It cannot be concluded if the numbers of contested cases had reduced, and/or the LAs were 'gatekeeping' cases based on their own criteria, rather than those agreed within the study. For example, they

might have wished to suggest cases where the LASW had a ‘good’ reputation or was more experienced. The timescales for the fieldwork meant that it was not possible to wait for further cases and therefore a limitation of the study is the inclusion of four rather than six cases. This is also a limitation of the research design; arguably a different method for selection of cases, that was independent of the LA lawyers, would have been preferable.

#### ***4.6.2 (b) Accessing court based meetings and hearings***

For each of the identified Phase 1 cases, I arranged to observe pre-hearing advocates meetings, other professional court-based discussions and the initial or early court hearings. In one of the cases, the LA failed to notify me of the first court hearing (it was an emergency application). However, I was able to attend the next hearing shortly afterwards, which was categorised as a ‘review hearing’. This occurred at a very early stage of the research process. As my involvement in this and other cases became more established, the LAs reliably notified me of any meetings and hearings, as they were scheduled.

In the observations of meetings in both phases of the study, there were several occasions where I was invited, by social work and legal professionals, to express a view about what was being discussed. I politely declined to contribute to the discussions, and this was accepted by the participants. During the hearings, my role as a researcher conducting observations was more apparent, due to my position at the back of court, sitting behind the LASW and the other parties. However several times, particularly after the contested hearings, I was asked for my opinion about the LASWs’ performance in oral evidence, by both social work and legal professionals. This is not surprising, as the



LASWs' evidence was a focus of my research and therefore those involved in the cases may have been interested in my initial views about this. Nonetheless, it created a dilemma for me as a researcher, and required me to decide how to respond. I explained that I would need to go away and analyse my observations before expressing a view, and this was accepted by those who were asking. These examples illustrate some of the practical challenges of ethnographic research and particularly field observations (Brewer, 2000; Hammersley and Atkinson, 2007).

The information I provided to participants prior to the fieldwork included my professional background experience (Appendix F. p.363). As a qualified and experienced social worker and social work educator, I anticipated that I would identify with and be seen (to some degree) as an 'insider' in relation to the LASWs in care proceedings (Berger, 2015). As an experienced CG, I also anticipated that I would identify with and be viewed as an 'insider' by the CGs. I expected that those lawyers and judges who knew me, or knew of me, would consider me at least knowledgeable of the legal processes in care proceedings. I anticipated my role in observations would not be as a complete participant, where I was immersed in the professional work of the LASWs or other professionals, but more as an informed observer with some 'insider' status and partial participation in the processes (Bryman, 2012). I expected that my participation would be limited to engaging with the professionals in the setting in order to facilitate the observations, but not engaging in the case related discussions or decision-making. This reflects a continuum of options within an ethnographic approach as to how far the researcher becomes part of the setting and the processes being observed (Brewer, 2000; Hammersley and Atkinson, 2007).

The observations in the study were conducted without issue. Whilst I had no direct contact with any of the parents or family members in the cases, I was aware of the need

to remain unobtrusive as far as possible, and respectful of the very difficult situations that the parents and family members were facing. In each of the contested FHs, the parents were understandably emotional and at times visibly distressed. In one case, the LASW was upset after giving her oral evidence (discussed further at p.212 and p.281). These emotional aspects of the cases and the professional responses that I observed are discussed later at p.301. My previous experience as a social worker and a CG meant that these types of emotionally charged situations were familiar to me. This tacit knowledge and previous 'insider' experience assisted me as a researcher in managing my feelings and continuing with the observations, even when those I was observing were distressed. I did notice however, and reflected after the observations, that my experience as a researcher was different from my professional experiences in care proceedings. As a social worker or CG, I had formed a professional opinion and was 'invested' in a particular outcome in a case. As a researcher, my interest was primarily in gaining access to the cases for the purposes of data collection and analysis relating to my research questions. Whilst I was able to use tacit knowledge from my professional experience within the research process, I was 'distanced' from the family members and the issues in the cases, which was a contrasting experience to being a professional practitioner in a case. Had the research method involved a more immersive ethnographic approach, within one of the professional groups in care proceedings, then I may have experienced this differently. This illustrated to me that my role had some elements of 'insider' status and influence, however this was largely due to my previous experience and membership of a professional group and the application of tacit knowledge within the research process. (Corbin Dwyer and Buckle, 2009; Berger, 2015)

During the observations of meetings and court hearings I made detailed, hand written field-notes, focussing on verbal exchanges between and about those professionals who were present. Ethnographic field notes should have a focus that is aligned with the particular research aims (Brewer, 2000). The content and structure of field notes are also influenced by how much background and/or tacit knowledge the researcher has, to discern what is potentially relevant to the research questions, and to navigate specific practices and language (for example ‘jargon’) within the research site (Wolfinger, 2002). My preparatory observations of care proceedings (p.115), assisted me to prepare for the construction of field notes. This included the required focus and what could be omitted. In this study it was appropriate to focus on what was being said between professionals (in other studies it might be appropriate to record details of the physical environment, or people’s physical appearance). As far as I was able, I took verbatim field notes of the verbal exchanges between professionals. I also recorded my observations of the presentation and demeanour of the LASW, particularly in the court based discussions and the hearings, as I recognised these aspects would be relevant. Initials were used for any references to family members, the children in the case and the names of professionals in the handwritten field notes, to ensure anonymity.

#### **4.6.2 (c) Interviews**

A semi structured approach was used for the interviews with the LASWs and the lawyers in Phase 2. The interview schedules were aligned to the research questions and reflected the ‘final’ stage of the proceedings in the sample cases (Appendices N. and O., p. 372 and p.373). Each LASW reflected on evaluations of their evidence overall and

their ‘performance’ giving oral evidence. In each case, despite the case being contested, the court had granted the orders that the LA had sought.

There were some difficulties in arranging interviews with the lawyers for the non-LA parties, after the FHs. In one case, one of the lawyers expressed some concern about participating in a case-related interview and consulted their professional body for advice. This lawyer did not respond to further communication about a potential interview. Requests for interviews with the other lawyers in this case were also not responded to, other than by the barrister for the mother. There are several possible reasons for this. It was the first case to be observed in Phase 2, and it was not one of the cases where I had been involved during Phase 1. At this time, my presence as a researcher in the court was relatively ‘new’ (even though I had already conducted some observations in Phase 1). This may have affected the lawyers’ decision about being interviewed, particularly if the advice from the professional body did not encourage participation. The reluctance of the lawyers may also have been influenced by the fact that all were from the same barristers’ chambers, except the barrister for the mother, and so there may have been some shared concerns about taking part in research interviews. As I continued with the other Phase 2 cases, my presence in the court building became more ‘familiar’ to professionals, evidenced by more frequent informal conversations with other professionals (not in the sample cases) asking about the study (in general terms). It is also possible therefore, that, professionals became more accepting of the study and more comfortable as it progressed. The lawyers in the other Phase 2 cases did not express any concerns about being interviewed. There were lawyers in the other Phase 2 cases who were not interviewed, however this did not appear to be due to reluctance to be involved. In these instances, agreement was given to be interviewed, however despite many attempts to arrange interviews, it was not

possible to complete them prior to the conclusion of the fieldwork, predominantly due to the lawyers' work commitments. (Details of the lawyers interviewed in the Phase 2 cases are provided in Appendix T. p.378)

#### ***4.6.2 (d) Written evidence and judgments***

The final written evidence was analysed after the FHs, and after the judgments had been delivered. In accordance with research governance requirements, written evidence was reviewed on LA premises. The approach was as for Phase 1 (outlined at p.117).

Three of the judgments were available as typed judgments either on the last day of the FH or at a subsequent judgment hearing. In one case, the judgment was delivered orally and no typed judgment was provided thereafter. Field notes were taken of this oral judgment, verbatim as far as possible, for analysis. The judgments were analysed for comments (or lack of comments) about the LASWs' written and oral evidence, to supplement the other data sources and provide some (limited) case specific data from the legal decision maker in each case.

### **4.7 The data analysis process**

The epistemological and ontological starting points for the study explained at p.99 also directed the methods and process for data analysis. A critical realist approach uses abductive analysis to apply new explanations or concepts to the data via theoretical re-description (Fletcher 2017), to 'show how something might be' (Meyer and Lunnay 2012:2). Retroductive analysis is also used to identify and explain underlying generative mechanisms that cause things to appear as they do within the data (McEvoy

and Richards 2003). However, before reaching this stage of the analysis, the data must be processed. In line with the research questions and methodological approach, a thematic approach was used for initial analysis of the data.

Thematic analysis is a commonly used process in qualitative research, in which data is 'encoded' by the researcher, according to apparent patterns, categories and concepts (for example, Boyatzis 1998; Bryman 2012; Padgett 2008). In practical terms, the data was managed using NVivo Qualitative Data Analysis (QDA) software. Audio recorded focus groups and interviews were transcribed and the transcripts uploaded into NVivo. Handwritten field notes from observations and analysis of the written evidence were photographed and uploaded into NVivo. The coding and preliminary thematic analysis was conducted within NVivo, as described below.

#### **4.7.1 Coding:**

Thematic analysis can be used within abductive and retroductive approaches, as an organising framework for initial interpretation of the data (Bunt, 2018). Prior to coding and analysing, I was aware of theoretically and research informed features of expertise, as discussed in Chapter 3. These included credentials, mastery of a body of knowledge, and high levels of skill developed through experience (for example, Dreyfus and Dreyfus 1986; Fook et al 2000), and they provided the basis for initial coding. I also used theoretical and research based knowledge to generate additional 'theory driven' codes (Boyatzis, 1998), reflecting a more 'deductive' approach. These included, for example, 'length of post-qualifying experience', 'references to SW theory and research', and 'references to case law' (indicating the use of legal knowledge). These codes were applied across the professional groups and across the cases. In addition, I

simultaneously applied a more 'inductive', data-driven, open coding approach (Padgett, 2008) as I read and re-read the transcripts and field notes, generating further codes. Boyatzis (1998: 11) describes this as 'sensing themes' and 'recognising the codable moment'. These further codes included aspects of the LASWs' approach to communicating their evidence, and aspects of the LASWs' evidence identified by the legal professionals as important in their evaluations. For example, across the professional groups and the cases I identified occurrences of data that related to 'having the court in mind', 'knowledge of the child and the family' and 'impact of timescales'. These and other aspects of the data were constructed as 'data-generated' codes (Boyatzis, 1998) that were then applied iteratively across all the data sources, prior to the generation of themes.

#### **4.7.2 Generating themes and sub themes:**

Initial analysis of the coded data confirmed that developmental theories of expertise would be insufficient to understand and explain the dynamic processes involved in social workers presenting evidence and legal professionals evaluating both the evidence and the social worker's presentation of their evidence. Reflecting a critical realist approach, abductive analysis would be used to formulate likely theoretical explanations for the themes in the data. In exploring the literature on expertise and thinking about my research questions, Collins and Evans' (2007) theory of expertises (as discussed in Chapter 3, p.85) seemed to offer a framework that better reflected the processes involved. For the purposes of analysis, it was not necessary to abandon the developmental theories of expertise, rather the addition of Collins and Evans' framework enabled a more focused consideration within the data on the communication

and evaluation of expertise across disciplinary boundaries. Analysis of the data-generated codes also highlighted the importance of LASWs' presentation of their evidence and their professional 'self' in the data, including the impressions formed of them by those evaluating their evidence. This led to the inclusion of Goffman's (1959) dramaturgical theory within the abductive analysis, with 'impression management' as a potentially significant theoretical explanation for themes. As the analysis progressed, iterative application and interpretation of these theory driven and data driven codes, led to the generation of overarching themes and sub themes, which are used to present the data in Chapters 7 (p.189) and 8 (p.228).

Within a critical realist approach, retroductive analysis considers the generative mechanisms within social structures and processes, which cause things to appear as they do within the data (Meyer and Lunnay, 2012). From literature and research relating to the legal framework, system reforms, child protection social work and care proceedings (discussed in Chapters 2 and 3), it was apparent that many such mechanisms or could impact on LASWs and other professionals in care proceedings. These included, for example: the interactions and potential interferences between the structures and systems of law and social work, increased numbers of care proceedings and reduced resources within the family justice system, the effects of austerity and lack of support services for families, and the twenty-six week timescale for care proceedings. During data collection, social work and legal participants highlighted similar structural and process issues in interviews and focus groups, and codes were generated accordingly. Retroductive analysis was applied in relation to the potential influence of structural and process issues on the data and the themes in the study. These aspects of the data analysis are explored further in the Discussion and Conclusions chapter (Chapter 10).



#### **4.8 Limitations of the study**

A key limitation was the size of the study design, primarily determined by the resource constraints of doctoral research, but also affected by the challenges of researching ‘live’ cases in care proceedings. In a larger study, a broader range of cases within the sample could have resulted in data collection from more ‘types’ of contested FHs, enabling analysis of a wider range of case issues and features relating to the LASWs’ evidence. Additionally, the views of children, parents and family members about the presentation of LASWs’ evidence were not included. The study was designed to focus on professional interactions and in particular the social work and legal evaluations of LASWs’ evidence. There are significant ethical and legal challenges to including children and family members in care proceedings research, particularly where the focus is on ‘live’ cases (HMCTS 2014). These challenges could not have been adequately addressed within the scope of this study.

The research design and sampling strategy maximised opportunities for depth of data collection and analysis, whilst allowing consideration of a small range of cases. The sample of cases in Phase 2 was limited to the minimum number for the study (n=4) due to some identified cases not being included, and then a lack of contested cases being identified towards the end of the fieldwork timescale. There was also a lack of diversity in the legal decision makers in the final sample of cases, despite efforts to include cases heard by magistrates and DJs in the sample. This may have been addressed if an additional two cases had been identified, as planned, or if a different selection process for the sample cases had been used.

There were some aspects of the research design that, with the benefit of hindsight, could have been improved. For example, decisions were made not to interview the

magistrates/judge or the CGs in the sample cases. It was considered that ethical and legal issues would prevent magistrates and judges being interviewed after a contested FH, in the event that the case might be appealed. However, since this decision was taken (prior to the ethical approval process in 2014/5) other studies have successfully included interviews with the judiciary, after cases have concluded (for example, Welbourne et al, 2017). In relation to the CGs, the decision not to interview them in the sample cases was made on the basis of likely high numbers of interviews with the lawyers for the parties. In the event, not all of the lawyers were interviewed, and in retrospect it would have been a better decision to include the CGs in the case specific interviews in Phase 2.

#### **4.9 Evaluating the research design**

Traditionally, and particularly in quantitative research, concepts such as validity and reliability have been used to evaluate the quality of research design including methods for data collection and analysis (Bryman, 2012). In qualitative research, these concepts have been challenged, and in some cases adapted (for example, Lincoln and Guba, 1985; Healy and Perry 2000; Golafshani 2003; Hammersley and Atkinson, 2007) to provide quality criteria more appropriately aligned with qualitative methodologies. Whilst a range of criteria for evaluating qualitative research is available, many encompass Lincoln and Guba's ideas of 'trustworthiness' and 'authenticity' as key quality indicators, highlighting the importance of openness and integrity in the design and execution of research (Bryman, 2012; Padgett 2008; Nowell et al, 2017).

In this study, a combination of methods within an ethnographic approach was used, to 'triangulate' data about the sample cases, from different sources (Moran-Ellis et al,

2006). After the data collection, preliminary interpretation of the data involved a combination of theory-led and data-led coding, to construct themes and sub themes (Boyatzis, 1998). Abductive and retroductive analyses were then used to provide explanations for the findings in the data and the mechanisms and drivers that may be influencing practice and process in care proceedings (Alvesson and Sköldberg, 2009; Meyer and Lunnay, 2012). Whilst the sample size was small, the ethnographic approach within the research design enabled sufficient data to be collected and analysed to address the research questions and the overall aim of the research (Padgett, 2008). The methods chosen enabled data collection and analysis from a range of sources and a variety of perspectives, including researcher observations of care proceedings processes and practice. This strengthens the findings from the study, however it is also acknowledged that additional findings could have been generated from a larger study. Acknowledging the limitations of the study, the implementation of the research design enabled the aims of the research to be met and the research questions to be addressed.

## **CHAPTER 5: SOCIAL WORK AND LEGAL PRACTICE IN CARE PROCEEDINGS IN THE STUDY AREA – PHASE 1 DATA**

### **5.1 Introduction**

This chapter presents data from Phase 1. These data were gathered from interviews with LA social work and legal services managers and observations of LA meetings to understand the practice context within the two LAs in the study, in particular the processes for evaluations of LASW evidence prior to and during care proceedings. The data sources are outlined in Table 5.1, below. This is followed by a summary explanation of the processes for evaluation of LASW evidence in each LA, prior to care proceedings being issued, illustrated in Table 5.2. The remainder of this chapter presents data from the SW and legal professionals who were interviewed or took part in focus groups. These themes and sub themes generated by the analysis are presented in Tables 5.3 (p. 145), 5.4 (p.159) and 5.5 (p.168) with discussion of the data following each table. The chapter concludes by outlining how this analysis of Phase 1 data informed the theoretical framework for data analysis in Phase 2 of the study.

**Table 5.1 Phase 1 data sources by context and type**

Context	Data Source	Data Type
<b>In-house processes for preparing and evaluating LASW evidence</b>	LA1 social work manager (team manager)	Interview
	LA1 legal services manager	Interview
	LA2 social work manager (senior manager)	Interview
	LA2 legal services manager	Interview
	Observations of Resource Panel meeting in LA2 (cases discussed: n= 6)	Observation of LA meeting
	Observations of Legal Planning Meetings LA1 (n=6, all within one weekly meeting) LA2 (n=1)	Observations of LA meetings
<b>In-proceedings evaluations of LASW evidence</b>	Cafcass regional manager	Interview
	Cafcass children's guardians	Focus group
	Family court magistrates	Focus group
	Family court district judges	Focus group
	Family court circuit judges	Focus group

## **5.2 In-house (LA) evaluation and decision making processes in the two LAs**

Both LAs in the study area operated processes of 'first line' management (team manager) oversight of social work practice. The LASWs' plans and recommendations about children and their families were developed in conjunction with social work (team) managers or advanced practitioners, usually through informal and formal supervision meetings. More senior social work managers were involved at certain points in the

process, in particularly complex or sensitive cases and in permanence planning meetings or, as in LA2, a 'Resource Panel'. Written LASW evidence for care proceedings was developed, amended, and 'signed off' by LASW managers before being submitted to the legal department for evaluation, sometimes resulting in suggested amendments to documents, prior to filing with the court. Advice from LA lawyers was available to LASWs and their managers, and could be sought prior to and/or during the construction of the written evidence. This was in addition to formal Legal Planning Meetings (LPM), which always involved a LA lawyer to agree the decision about the appropriate next steps in a case. These processes and the people involved at each stage, are summarised in Table 5.2, below.

**Table 5.2 LA decision-making processes for issuing care proceedings in the two LAs**

<b>LA1</b>	<b>LA2</b>
<p><b>Supervision - SW team manager and LASW</b></p> <p>SW team manager evaluation of LASW written work (assessments) and discussion of case – to inform decision to go to LPM</p>	<p><b>Supervision - SW team manager and LASW</b></p> <p>SW team manager evaluation of LASW written work (assessments) and discussion of case – to inform decision to go to Resource Panel</p>
	<p><b>Resource Panel - Senior SW manager, team manager, LASW and other SW managers</b></p> <p>Senior SW manager evaluation of LASW written work (assessments) and discussion of case with LASW, team manager and other LA managers within Resource Panel – to inform decision to go to LPM (no LA lawyer involvement)</p>
<p><b>Legal Planning Meeting – Senior SW manager, LA lawyer, SW team manager, LASW and other SW managers</b></p> <p>SW and Legal evaluations of LASW written work (assessments) and discussion of case within LPM – to inform decision to issue care proceedings or not</p>	<p><b>Legal Planning Meeting - SW team manager, LA lawyer and LASW</b></p> <p>SW and Legal evaluations of LASW written work (assessments) and discussion of case within LPM – to inform decision to issue care proceedings or not</p>
<p><b>Supervision - SW team manager and LASW</b></p> <p>LASW preparation of written evidence, in order to issue care proceedings – evaluated by SW team manager before submission to legal dept.</p>	<p><b>Supervision - SW team manager and LASW</b></p> <p>LASW preparation of written evidence, in order to issue care proceedings – evaluated by SW team manager before submission to legal dept.</p>
<p><b>Legal department feedback on written evidence - LA lawyer and LASW</b></p> <p>Legal evaluation of LASW written evidence, prior to issuing proceedings</p>	<p><b>Legal department feedback on written evidence - LA lawyer and LASW</b></p> <p>Legal evaluation of LASW written evidence, prior to issuing proceedings</p>

A particular difference between the LAs was whether and when lawyers from the LA legal department were involved in the decision to issue care proceedings. In LA1, a number of LPMs and review LPMs were held on the same day each week, chaired by a

senior SW manager. Also in attendance were a senior LA lawyer, a manager from the fostering and adoption teams and specific attendees for each LPM, the LASW and sometimes their manager (Observations LPM LA1). LA1 used an in-house template for LASWs to prepare a written report to LPMs, with their manager providing summary comments at the end, including a recommendation to the LPM as to the way forward. This represents an early evaluation of the LASW written information by their manager, prior to the submission of documents to the LPM. Within the LPM, evaluations of the LASW's written work by the senior social work manager and the LA lawyer were discussed with the LASW and a decision about issuing care proceedings was made jointly with the LA legal department. The LA lawyer advised those present about, for example, whether the information provided by the LASW was likely to meet the 'threshold' for care proceedings (CA 1989 s.31(2)) and/or the threshold for immediate removal of the children concerned, under an Interim Care Order (CA 1989 s.38 (2)) (Observations LPM LA1).

In LA2, a new system was introduced just prior to the data collection involving a weekly 'Resource Panel' to discuss cases across the LA, including children in s.20 accommodation, and cases where pre-proceedings processes or care proceedings were being considered. The panel comprised managers from the youth offending service, the fostering and adoption team, Looked After Children teams, residential care services, and an adolescent support unit. No LA legal representatives attended the Resource Panel, which was chaired by a Service Manager with supervisory responsibility for a number of (safeguarding) social work teams. A range of written documents such as a chronology, child and family assessment reports and/or 'update' reports from LASWs were submitted in advance, for discussion at the Panel. The Service Manager expressed



a clear view that decision-making and recommendations about care proceedings should be informed by a *social work* evaluation of the written information and professional discussion in the Resource Panel. (SW Manager LA2). Only after the Resource Panel recommended that pre-proceedings processes or care proceedings were appropriate, would the LASW or team manager make contact with the LA legal team, to arrange a LPM. (Observations LA2 Resource Panel). The Service Manager was clear about this gatekeeping role:

... before anything can go to the PLO system or into care proceedings, it has to have my approval...I have prior knowledge of a case, and a discussion with the team manager, and agree or not agree that we should pursue that avenue.... Prior to the decision whether we should go into legal proceedings or PLO, I would read the current children and family assessment and have an updated chronology. And we would also discuss which family members are possibilities [as carers] if we were going to take it further. (SW Manager LA2)

The differences in the processes between the LAs may reflect variations in managerial style and/or relationships between social work teams and LA legal teams (Dickens 2008). LA1's more integrated approach involving both social work and legal perspectives within decision making about potential care proceedings may also have been influenced by a positive working relationship with the LA legal team, built up over a number of years:

...we've always had a good working relationship with our legal department. There's been stability of staff... so relationships are built up, reputations are built up, trust in the work and what they're saying is built up... [The LA lawyers] are very good at coming in to the LPM and breaking things down and

saying right you've given me this information, but let's develop it... And that's really useful for social workers, to get it from a legal point of view, as well as from a social work point of view. (SW Manager LA1)

### **5.3 Phase 1 data - themes and sub themes across professional groups in the study area**

Data analysis generated themes and sub themes relating to the presentation of written evidence, and LASWs' 'performance' during their oral evidence. Data from the LA professionals are presented together (Table 5.3 at p.145) with data from the Children's Guardians and the judicial focus groups discussed thereafter (Table 5.4 at p.159).

#### **5.3.1 Phase 1 data - LA social work managers and LA legal services managers in the two LAs:**

Interviews with SW managers and Legal Services managers highlighted themes about communication and presentation within written and oral evidence, as outlined in Table 5.3:

**Table 5.3 Phase 1 data: themes and sub themes (LA social work and legal services managers)**

In-house (LA) evaluations of LASW evidence		
Professional group	Themes	Sub themes
Evaluations of LASWs' written and oral evidence by:  LA social work managers and LA legal services managers	<i>written evidence</i>  Communication and Presentation	Content <ul style="list-style-type: none"> <li>• Child focussed and risk focussed written evidence</li> <li>• Legal knowledge and having the court 'in mind'</li> </ul> Format <ul style="list-style-type: none"> <li>• The SWET</li> </ul>
	<i>oral evidence</i>  Communication and Presentation	Preparation <ul style="list-style-type: none"> <li>• Court skills training</li> <li>• Support from LA lawyers and SW colleagues</li> </ul> Performance <ul style="list-style-type: none"> <li>• Demeanour and nerves</li> <li>• Learning from experience</li> </ul>

***5.3.1 (a) Communication (written evidence): Content - child focussed and risk focussed evidence***

The social work managers described what they looked for in their early evaluations of the LASWs' written information, prior to the LPMs:

We're looking for analysis of the information... that they've got information about what risk factors exist... a clear analysis of what the impact on the child

has been... in a chronological format, that it's clear and concise. (SW Manager LA1)

... what it's like for that child to live in that situation... and what it would be like to be removed from that situation.... whether we could put services in that would maintain that child at home or whether we really have no option, that we really need to remove, and then looking at what we can plan for that... (what) makes this child at risk, what it is about the parents' behaviour or lack of behaviour... what work we've done to try and change that and what work other people have done to try and change that. (SW Manager LA2)

These evaluations were clearly from a SW perspective, to consider whether a sufficiently thorough, child focussed, SW assessment had been undertaken, including any support work or services provided, and to check this had been presented appropriately (in relation to the social work process). The SW managers described an active process of review, feedback and amendment of written information, prior to the information being shared with the legal department for the LPM. Both SW managers explained how they would seek to improve the quality of LASWs' written information in relation to content and presentation:

Sometimes it goes back and forward... if I don't think there's enough information in that document, or there's gaps in it from information that I know, or they've not explained a situation clearly enough, or they've put too much information in... too much description as opposed to analysis. Then I would send it back... (and) give them some guidance in terms of how they need to amend it. (SW Manager LA1)

I guess for the legal meeting it's not as important in terms of grammatically and all the rest of it. As long as the facts are there and it's written in a way that people understand... The analysing is more important I suppose. But then [LASWs] have to go and write SWET reports. So we do have to say to them, you need to alter this. (SW Manager LA2)

At this stage, the focus for the SW managers was on evaluating the quality of the SW practice in the case, and the quality of the LASW's communication of practice within the written material. There was also an acknowledgement that the presentation of the information for a legal audience would require additional, specific documentation to be prepared, with the court 'in mind'.

***5.3.1 (b) Communication (written evidence): Content - legal knowledge and having the court 'in mind'***

The lawyers' evaluations were focussed on legal issues, with active consideration from the outset as to how a court might view the SW information and eventually the written evidence.

... the lawyer's going to be interested in threshold, they're going to be interested in how the evidence will hold up in court... what evidence have we got and from that evidence do we have any initial views about work that needs to be done, whether that work can afford to be done outside proceedings or do we need to go straight into proceedings. (LS Manager LA2)

We evaluate what's on that paperwork and decide what evidence we will require for either it to go into the PLO process or indeed go straight to the court process... I would be giving guidance at that point for evidential points and for

example, have they done a complete search of family and friends, have we really dug down and seen if anybody out there who could have this child. (LS Manager LA1)

The lawyer's role included anticipating any gaps or weaknesses (from a legal perspective) in the LASWs' account of their practice, as represented in their written evidence. In the second quote above, the LA lawyer highlighted an evidential requirement that also related to the thoroughness of the SW practice in assessing potential family/friends carers. The lawyer had 'in mind' the legal requirements on the LA to search for and assess family/friends carers (DfE, 2014b). They also provided an evaluation of the SW practice and decision-making, such as what constitutes a 'complete' search for family/friends carers. In order to evaluate whether the SW assessment of potential family/friends carers is sufficient, or for example whether there should be support to enable potential family/friends carers to be involved, the lawyer needed some knowledge and understanding of SW practice as well as the legal requirements and the court's expectations. This is discussed further in Chapter 8 (p.228).

### **5.3.1 (c) *Presentation (written evidence): Format - the SWET***

The decision to issue care proceedings leads to the preparation of the initial SWET document (Research in Practice 2016) by the LASW, to accompany the care proceedings application form (completed by the LA lawyer). The SWET requires the LASW to prepare SW *evidence*, specifically for a legal audience within proceedings, as distinct from other 'internal' LA SW records and documents. The SWET is filed with the court in the LASW's name, countersigned by their manager. However, the

production of this LASW evidence is a collaborative exercise involving oversight and evaluation of the content and presentation of information in the SWET, by social work and legal professionals. Presentation issues such as typographical errors were highlighted as a regular issue when evaluating written evidence, however content and analysis, including perceived ‘gaps’ in the evidence, were considered particularly important. This included anticipation of the parties’ and the court’s subsequent evaluation, particularly in relation to *Re B-S* ‘compliance’. The need for managers and lawyers to advise about strengthening the LASW evidence, was also highlighted:

If [legal] feel that the levels of contact are maybe too high or too low, or anything that they feel we’re going to be challenged on, they would ask for some clarity around that, those kind of things. (SW Manager LA1)

A lot of the focus following [*Re B-S*] would be about the analysis... the options not being weighed up... what is the rationale for [the care plan], what you’ve looked at and what you’ve discounted... Contact would be another common thing that legal would pick up on... it would be about anticipating what questions the court might have from reading the statement, what counsel or solicitors for the parents might [identify] in terms of gaps. And try and get those into the [written] evidence... rather than have a social worker go to court and then have to fill those gaps in the [witness] stand. (LS Manager LA2)

Here the lawyer described in-house evaluations with the in-court evaluations ‘in mind’. They aimed to guide the LASW to remedy shortfalls or gaps in the draft evidence, prior to filing with the court, to avoid LASWs having to deal with points in cross-examination, if the case became contested.

Level of experience was not necessarily considered a determining factor for the quality of the written LASW evidence. Variations in ability to synthesize and analyse information clearly, and in a way that the court desired (as in *Re B-S*), was not found to be linked to LASWs' length of practice experience:

It depends on the social worker and [their] experience... I've got some social workers on my team who've been qualified for ten years and I will probably send documents back 3 or 4 times with double checking amendments. I've got other social workers who are quite newly qualified who just get it and have that really clear analysis really of what they're providing... (SW Manager LA1)

However, experience of the legal process and in particular *contested* hearings, was considered to develop LASWs' understanding of the court's expectations, anticipate areas where evidence might be challenged and 'tailor' their written evidence accordingly:

... with experience you get used to what they're looking for. [At first] you come at it from a naïve point of view, you know this case speaks for itself, and you write the information as you've got it. When you've got more experience you can think... what would their barrister be looking at and you try to tailor it... You want to produce as good a written document as you can, that might avoid verbal evidence needing to be given... you try and write it in that regard so that you can respond to every issue that might be being raised. (SW Manager LA1)



***5.3.1 (d) Communication and Presentation (oral evidence): Preparation - court skills training***

The need for LASWs to be supported to prepare for the role of professional witness was reflected in comments about LAs providing general training and case specific support to LASWs involved in care proceedings. Both LAs described in-house ‘court skills’ training opportunities for LASWs, which focussed mainly on giving oral evidence and being cross examined in contested hearings. These were one-off training opportunities, comprising a short (1 or 2 day) course, often provided early in a LASW’s career. In LA1 this training was provided in-house by a LA lawyer and a court-experienced SW manager. In LA2 an external training provider was used.

We do put them on [court skills training] and we do try and prepare them...

(it’s) very difficult for them to go into court and give evidence... If you’re on a safeguarding team the expectation is you will be in court on a regular basis and that’s part of your job. (SW Manager LA2)

... when you’re newly qualified you get quite a lot of training thrown at you in that first year, and then often you’re left to drift a bit... So we are [providing] refreshers to try and keep people updated, and make them feel that it’s not just newly qualified [LASWs] that get the training. (LS Manager LA1)

***5.3.1 (e) Communication and Presentation (oral evidence): Preparation - support from LA lawyers and SW colleagues***

In addition to court skills training, the social work and legal services managers explained how they try to prepare and support LASWs to give oral evidence and be

cross-examined. This preparation was linked to the LASWs developing a sense of confidence as professional witnesses.

If I have got final hearing coming up I always send an email just to remind [the LASW] to read everything that is in that bundle, and please contact me if there's anything you're not sure about. Because preparation is key and they will feel more confident if they've prepared well. (LS Manager LA1)

SW and legal services managers gave examples of support and guidance for LASWs, to help them with confidence and to reduce anxiety:

Some are more confident than others and that's [not] necessarily the ones that have done it more... We talk them through what to say, what not to say. We have meetings with legal, get advice and support from them, so I would say on the whole it's much improved how we do verbal presentation in court. (SW Manager LA2)

I do a checklist for them, this is what you need to do the week before [a final hearing]: observe contact, contact the foster carers. Just because there's so much going on they could easily forget some of those things. Just to take stress away for them... Because it's hard, who would think on your first care case, [about the need to] contact? We try and just make things as calm as possible. (LS Manager LA1)

The legal services manager in LA1 appeared to be 'managing' aspects of the SW process prior to a contested FH, to ensure the LASW had up to date evidence of their practice with the children and the family. The aim was to support the LASW, recognising the pressure of busy workloads and the needs of a LASW who was inexperienced in care proceedings. However, it is interesting to consider how this

impacts on other competing demands on the LASW's time, including their manager's priorities for progress and/or completion of other work.

The SW manager in LA2 suggested that whilst most LASWs would improve with experience and additional training or support, there might be some for whom giving oral evidence remained professionally challenging.

A lot of the times we get positive feedback about the decision-making within a case [but] we do get some negative stuff as well... if we see people that are perhaps less confident than they should be then it's about [addressing that] in supervision or further courses or even scenarios in team meetings. You might not get them to the confidence you ideally want, but people do usually improve... (SW Manager LA2)

#### ***5.3.1 (f) Communication and Presentation (oral evidence): Performance - demeanour, nerves***

Evaluation of a LASW's performance in oral evidence will inevitably be 'after the event'. However, the SW managers and LA lawyers identified aspects of LASWs' presentation and demeanour that, in their view, could create a positive impression as a professional witness. These included managing nerves and anxiety about the legal environment, understanding the role of a professional witness in the proceedings, and not being defensive in relation to potentially negative judgments about their professional practice. The SW managers outlined features of LASWs' presentation that they considered would indicate good or 'expert' oral evidence:

[They are] very clear, know the family very well, the concerns are very clear... I think if you've got somebody who's very confident then the judge feels happier than with somebody who is perhaps more nervous ... (SW Manager LA2)

I think they would look more comfortable , they wouldn't be nervous, there's a confidence about them verbally, in terms of how they're giving information... Somebody who's not being ruffled by the questions that are being asked of them... not becoming obstructive, not arguing back... Being able to keep that professional calm about themselves is expertise in itself... you recognise the process for what it is and that people are not attacking you as such, and you're able to separate out what's actually happening and how you're feeling. Because you do feel like you're being judged and people can be defensive in that environment. (SW Manager LA1)

The lawyer in LA2 provided a legal perspective on features of 'good' oral evidence:

Good oral evidence I think is somebody that's confident, they're clear, they won't be pushed... [they've] got real ownership of the piece of work that's been done... standing up to the questions, having an answer, saying when they don't have an answer... Somebody that will acknowledge the positives [and] say what the weaknesses are... Someone who's looked at the research, someone who can explain the thought process and the decision making that's gone into it. Someone that has evaluated the options, thought about any other possible ways... someone's who's updated themselves as to the position so they're giving an up to date piece of work... they understand that all they're doing is saying to the court what they think to be the case, based upon their assessment, and they're clear. (LS Manager LA2)

The lawyer in LA1 also identified ‘appropriate’ dress for the courtroom, familiarity with the ‘rules’ of the court and the containment of emotions as important in relation to LASWs feeling confident, their demeanour and creating a positive impression.

To give them confidence... they need to dress like an expert. You’d never see a consultant psychologist go to a hearing not dressed appropriately. They [need to] know the rules of the court as well, I know that sounds daft, but you answer to the court, it’s the court making the decision. They’re always respectful to people, even when they’re being somewhat badgered... They don’t get emotional, they answer in a professional manner, even when their professional judgement is being criticised. And they keep that kind of calmness about them, which is very difficult... but it does come with experience. (LS Manager LA1)

The SW manager in LA1 identified a balanced approach with family members as likely to support an evaluation of the LASW as a trustworthy professional witness:

(social workers) who are more balanced, I think more weight is lent to the evidence that’s given by those people because they think they’ve thought about it and they’ve not just written these parents off... They’ve tried to give them a chance... and if you can evidence that, then there’s trust... they’ve been professional, they’ve conducted themselves appropriately, and there’s no reason not to trust what they’re saying. (SW Manager LA1)

### ***5.3.1 (g) Communication and Presentation (oral evidence): Performance – learning from experience***

The LA lawyer in LA1 described processes for providing positive and negative feedback to LASWs about their oral evidence, to assist with learning from experience:

The temptation is to only [feedback] when things have gone wrong... it's really important too if you've done well... I will send an email copying in the manager and the service manager saying well done this is a really good job... it's about reinforcing the positives. If it's been a disaster then we would convene a meeting and look at where we'd gone wrong [to learn from] mistakes... [but] you don't want to make [the LASW] feel that it's their fault, because it's not down to the social worker, it's the local authority and we own the decisions. (LS Manager LA1)

The SW managers expressed different views about the influence of experience on developing confidence in giving oral evidence, with one manager suggesting that LASWs' 'feelings' about the process may be a contributory factor in supporting or hindering learning.

The more experienced people are, the more comfortable they are in the witness box (SW Manager LA1)

I know social workers that have been giving evidence for years and they're just as nervous... they're not improving. Whereas I've seen much less experienced social workers, much more confident and much more able to get their views over clearer and better... [I think] that's about them and how they feel. (SW Manager LA2)

The lawyer in LA2 and the SW manager in LA1 also expressed views that a lack of consistency amongst the judiciary and between LA lawyers might contribute to a lack of clarity about expectations within in-house evaluations of LASW evidence and within proceedings, which could affect confidence and learning from experience:

... if the judges [are inconsistent] the lawyer isn't necessarily able to advise the client what will or won't happen... Social workers and managers will [have] a case go one way and [then] they've had a different guardian or a different judge and something different has happened... it causes confusion... [LASWs] probably don't feel they get consistent messages about what the requirements are. (LS Manager LA2)

In terms of oral evidence, it is a really difficult situation to be in, it's still a very adversarial process to go through... we could go before one judge and they've got the evidence there and they will agree to a child being removed. And before another judge with the exact same evidence you wouldn't get removal from that judge. If the evidence is the same, the situation is the same, and it's been presented in the same way, what is it about the 2 judges that's made them come to a different point of view? (SW Manager LA1)

The SW managers provided their thoughts about perceptions of LASWs as professional witnesses in care proceedings:

I remember years ago going to court and it was almost like you weren't even in existence in the courtroom, whereas now there is a real sense of the social worker, even in judgements... positive feedback to social workers happens more frequently now... barristers saying [the LASW] did really well, parents' solicitors saying you did really well... (SW Manager LA1)

The other SW manager identified that, having been previously 'marginalised', it would take some time and support for LASWs to achieve a sense of being an 'expert':

It's been about the trust of the local authority, from the judges, from the Guardians... I think we were pushed out really in a way... I still think there's a

difficulty about us being the experts... there are staff that are very good and staff that perhaps need more support... I think it's taken a period of adjustment for staff to get that confidence again, to be the expert. We've been shouting it for years, that we are [experts], and then suddenly we're centre stage again. (SW Manager LA2)

The recent shift towards viewing LASWs as 'experts' in care proceedings, in the context of family justice reforms, was viewed 'cynically' by one manager:

The cynic in me thinks it's because we haven't got the money now any more to pay for experts so we'd better make sure that these [LASWs] know what they're doing and get the work out of them... There's a lot of policy behind it, you know we need SWs as experts, we need it to be viewed in that way. (SW Manager LA1)

### **5.3.2 Phase 1 data - In-proceedings evaluations of LASW evidence (Children's Guardians in the study area)**

The Cafcass focus group elicited views and experiences of CG who evaluated LASW evidence in care proceedings across the study area, including the two LAs featured in the study. These evaluations were from a social work perspective within proceedings, after LASW evidence had been filed with the court. Analysis of data from the Cafcass focus group reflected the themes and subthemes generated from the SW managers' and LA legal services managers' interviews, as outlined in Table 5.4, below.



**Table 5.4 Phase 1 data: themes and sub themes (Children’s Guardians focus group)**

<b>In-proceedings evaluations of LASW evidence (Children’s Guardians focus group)</b>		
<b>Professional group</b>	<b>Themes</b>	<b>Sub themes</b>
Evaluations of LASWs’ written and oral evidence by:  Children’s Guardians in the study area (focus group)	<i>written evidence</i>  Communication  and  Presentation	Content <ul style="list-style-type: none"> <li>• Child focussed and risk focussed written evidence</li> <li>• Levels of experience and support provided to LASWs</li> </ul> Format <ul style="list-style-type: none"> <li>• The SWET</li> </ul>
	<i>oral evidence</i>  Communication  and  Presentation	Preparation <ul style="list-style-type: none"> <li>• Support provided to LASWs</li> </ul> Performance <ul style="list-style-type: none"> <li>• Demeanour, nerves</li> <li>• (In)experience</li> </ul>

***5.3.2 (a) Communication (written evidence): Content - child focussed and risk focussed written evidence***

The CGs described a lack of specificity in the LASWs’ written analysis at times, including the perceived over-use of generic and (it was felt) meaningless terms such as ‘concerns’.

I think the best examples [of written evidence] are where they are simpler and more direct, as in: 'I saw the child and the child said this to me, and this is my opinion'. Far too often you get really generalised, 'this is the risk, we are concerned about this'. It's really difficult to know who formed that opinion and what it's based on. (CG 3)

Here, the CG is not only seeking specificity about the risks to the child, but also evidence of practice encounters between the social worker and the child/family members, suggesting the CGs wanted to see in the written evidence that the LASWs 'knows' the child and the family.

The CGs also gave examples of how their evaluations of the content of LASWs' written evidence during proceedings might lead to questions about LA processes for decision making and the overall coherence of the SW evidence document:.

[LASWs] might give you a lot of information, which is really useful, really analytical and relevant, but then the final decision is made by somebody else in the authority. [In] the analysis, [the LASW's] thinking is going one way, and at the end there's this [manager's] recommendation which just doesn't seem to fit... You suspect there's a resource decision or something behind it and it just doesn't fit together. That puts [the LASW] in an incredibly difficult position. (CG 3)

...you can see that with the social worker has done the assessment, these are my findings, but then a manager or someone said oh we're not going to go with that and the thread of the report doesn't fit together. (CG 2)

**5.3.2 (b) Communication (written evidence): Content - LASWs' level of experience and support provided to LASWs**

CGs expressed concerns about the level of support available to SWs from their managers and the 'culture' in LA teams that might influence the development of LASWs' practice over time :

I think some young inexperienced social workers aren't getting the support I think they need. They've loads of potential, very keen, very caring, very empathic towards parents, but they're just not getting the support in terms of the assessments and the decision-making. (CG 4)

I suppose there's two aspects to it, their innate ability as a social worker, some of which will be... analytical ability, their people skills which they might have anyway and some of it will grow with experience. And then there's the team culture and the managerial culture around them. (CG 3)

Unsurprisingly, a lack of management support was considered to impact on inexperienced LASWs, particularly those who did not have reflective supervision with their managers. This left the LASWs exposed to potential challenge by CGs or lawyers in court hearings:

It's inexperience I think. She just wasn't used to pulling evidence together and I think that's where she would have benefited from somebody telling her from within the authority, before it got court, so that then she's not being challenged in evidence and you look a bit foolish then. (CG 4)

So [LASWs] will say things like there's evidence that this child has got an insecure attachment. So you say well can you help me understand what that means, and how that's demonstrated? On occasions you get a blank look...

[But] if you don't ask the question when you interview the social worker, you can be damn sure a barrister will ask the question in cross-examination. I just think people have to be very careful about the things that they write down. Make sure you understand what you're writing down, run it by a manager... and get them to ask you questions about it. (CG 1)

The assumption in the quote above is that the SW manager is experienced in (contested) care proceedings and therefore able to ask relevant questions. This is discussed further in Chapter 10 (p.276).

### **5.3.2 (c) *Presentation (written evidence): Format - the SWET***

Issues with LASW's written presentation of their practice, analysis and recommendations were highlighted by the CGs. One identified that communicating with the court and within the legal process might require different skills to effective communication and social work practice with children and families:

There's a huge variation in people's skill with writing and I think particularly writing for court. You meet a lot of social workers who are very good with people and they clearly have a good understanding of the family, and the parents, but they can't communicate very well in writing and that's difficult. It doesn't do justice to the work they've done. (CG 3)

The CGs all expressed concerns about the impact of the SWET on the quality of written evidence:

I think part of the problem is local authority social workers, irrespective of ability, are often hamstrung by templates... their ability to analyse evidence is often restricted by the structure of the template... what they're using is kind of

stock phrases and it's almost like they're losing the capacity to think... Now I understand that the reasons for that is because people are under such incredible pressure... but it is really frustrating and quite aggravating. (CG 1)

...I want to know why we've got to where we've got. And I don't get that from these template documents. It's very led by the template, you've got to tick a box, you've got to put a date in. [But] I know the dates, so tell me why we've got to this point in these proceedings... why is it so bad now that you want to remove these kids? (CG 2)

The CGs' shared view was that a flexible approach to the SWET would be more appropriate and enable professional judgment in constructing the SW written evidence:

I think there are examples of really good social work... quite often it's down to individual social workers having the ability and then using the template more creatively, more flexibly. (CG 3)

One CG gave an example of what they viewed as exemplary written SW evidence:

...they adapted the template, they moved away from it on occasions, they cross-referenced information and they provided lots and lots of analysis... they were able to cover other areas rather than the presenting issue, which was the sexual abuse, but look at other difficulties in terms of the children's emotional and psychological development. Absolutely superb work. And it's because they had the confidence, and the ability - because it's not just about confidence - to be able to think outside the box. (CG 1)

### ***5.3.2 (d) Communication and Presentation (oral evidence): Preparation - support provided to LASWs***

The CGs identified with the need for SW managers to support LASWs to develop knowledge of the legal process and the court environment, to build confidence in being a professional witness. However, views expressed in the focus group suggested that this did not always occur, potentially leaving LASWs unsupported:

I've been there, I've been a social worker, and I know what it's like. But [LASWs] come to court for the first time and they're not even with a manager... I've been on contested hearings when a newly qualified social worker has come on their own, and I think it's not doing your confidence any good this, they should be supported. (CG 2)

The CGs also expressed concern that some LASWs were not sufficiently supported by their legal department, affecting the quality of their written and oral evidence. In particular, a lack of discussion between the LASW and their legal representative prior to a court hearing was highlighted as problematic, particularly for LASWs with less experience of care proceedings.

...sadly, you know sometimes you can come to court and the social worker has never met the local authority solicitor before the first application. Well that seems bonkers to me. (CG 1)

Additionally, when a LA solicitor had managed the case but hearings were conducted by an in-house advocate (or an independent barrister), it was felt that there could be a lack of continuity in the advice given to LASWs prior to a hearing about the content or focus of their written evidence:

...so the lawyer that's dealing with the case is different to the person who comes to court and I think sometimes there's a sense that there's things [in the evidence] that [the lawyer] may not have let through [if they'd been involved earlier]. (CG 4)

One CG also suggested that the judiciary could improve their interactions with LASWs as professional witnesses, to assist rather than hinder the LASW in providing the best evidence possible:

I think judges could do more sometimes to support social workers in making them feel more comfortable. Because presumably they want the best evidence from that social worker? So if the judge is sat there sort of haughty and critical, with somebody that is evidently nervous, I don't see how that's helpful, and that happens quite a lot in my experience, without necessity. (CG 3)

***5.3.2 (e) Communication and Presentation (oral evidence): Performance - demeanour, nerves and level of experience***

The CGs discussed examples of poor oral evidence from LASWs, highlighting how a lack of preparation and/or a lack of understanding of the legal process and the courtroom environment might negatively affect the impression created. The CGs recognised that giving oral evidence can be a stressful process for any professional witness, even those with extensive experience.

When it's poor it's because of lack of preparation and lack of respect for the court system, people turning up late or ill-prepared. I still flap after nearly 30 years of giving evidence. I will go over the court bundle make sure I've got all my facts at my fingertips and even then [sometimes] a clever barrister will side-

track you and take you down the road you don't want to go down... it's really hard. (CG 1)

The potential for an inexperienced and unsupported LASW to be 'de-railed' by the particular processes in contested hearings was highlighted. In the example below, the LASW's demeanour was affected by a lack of knowledge and understanding of the requirements of legal processes and the courtroom environment:

I saw [a] social worker giving evidence for the first time and nobody had told her about the affirming process. So the clerk came to her and handed the card and said do you want to swear or affirm and she didn't know what that meant. The judge was just really impatient with her and her solicitor had obviously not gone through it with her and had no sympathy, and she was immediately flustered... it just [was] a terrible start, she just lost all her confidence and it was awful. It was the simplest thing, and obviously nobody had ever done it with her, she was on her own and it was just terrible. (CG 3)

Lack of experience was considered to relate to confidence in giving oral evidence, and the potential to be 'risk averse' in relation to SW decision making. The overall approach of the LASW to their work was considered important, for the LASW to present as a balanced, credible professional witness.

It's [not necessarily] experience, just that openness of approach and willingness to be challenged, and reflect on what they're doing rather than a closed mind. Inexperience can mean that you're overly harsh because you haven't got the confidence to take risks. (CG 4)



### **5.3.3 Phase 1 data - In-proceedings evaluations of LASW evidence (magistrates, district judges and circuit judges in the study area)**

Three judicial focus groups conducted during Phase 1 gathered the views and experiences of LASW evidence from the judiciary in the study area. Each judicial focus group included participants with a range of experience and professional backgrounds. The group of magistrates (n=5) were all experienced in care proceedings cases and none was from a legal or social work background. The DJs (n=4) had all practised as solicitors in the field of family law before being appointed to the District Bench. They were all experienced in hearing care proceedings cases, as well as other aspects of family court work. The CJs (n=5) had all been experienced legal practitioners, with the majority having practised as family law barristers. All were experienced in care proceedings cases. One of the CJs had been a (family law) solicitor in private practice. Another of the CJs had previously been a barrister practising in civil cases (not family law) thus their experience of care proceedings cases was solely as a CJ, rather than also as a family law practitioner.

Data from the judicial focus groups reflected the themes discussed in the previous sections: content, presentation and performance, as outlined in Table 5.5:

**Table 5.5 Phase 1 data: themes and sub themes (judicial focus groups)**

In-proceedings evaluations of LASW evidence (judicial focus groups)		
Professional group	Themes	Sub themes
<p>Evaluations of LASWs' written and oral evidence by:</p> <p>Magistrates in the study area (focus group)</p> <p>District judges in the study area (focus group)</p> <p>Circuit judges in the study area (focus group)</p>	<p><i>written evidence</i></p> <p>Communication and Presentation</p>	<p>Content</p> <ul style="list-style-type: none"> <li>• SW and legal knowledge</li> <li>• Knowing the family</li> </ul> <p>Format</p> <ul style="list-style-type: none"> <li>• The SWET</li> </ul>
	<p><i>oral evidence</i></p> <p>Communication and Presentation</p>	<p>Preparation</p> <ul style="list-style-type: none"> <li>• (In)experience</li> <li>• Judicial expectations</li> </ul> <p>Performance</p> <ul style="list-style-type: none"> <li>• Demeanour and emotions</li> </ul>

### ***5.3.3 (a) Communication (written evidence): Content – social work and legal knowledge***

Knowledge of legal requirements and legal processes featured in the data from SW managers and LA lawyers in Phase 2, however only one of the CJs commented about this as a factor in their evaluation of LASW evidence. Their comment was in the context of discussion about the judges' views that the SWET produces formulaic written evidence, with LASWs sometimes using a kind of 'script', particularly in relation to the *Re B-S* balancing exercise:

...people become terrified of not being *B-S* compliant and therefore they have now produced a form of words which they can trot out in every case. (CJ 1)

Whilst LASWs' legal knowledge was not a main theme in the judicial focus groups, the magistrates and judges discussed the importance (to them) of LASWs having a professional (SW) knowledge base upon which to base their recommendations about children and families. One of the magistrates linked this to the 'credentials' of the LASW, inferring an expectation of a baseline body of knowledge acquired as a result of qualifying level training and education:

Because they will tell you... these are my credentials. They are employed on those credentials and those credentials carry weight, it assumes a body of knowledge. (M 1)

This magistrate went on to link judicial evaluations of expertise to the application of SW knowledge such as children's development and needs, in reaching recommendations for care planning:

...the expert is the person who can actually apply the tenets of social work to a situation... We want this child to be well looked after and it's not just a matter of giving food and clothing, but all the other things that make the child well-rounded and the social worker's got to know what those things are, and see whether or not they are there, before making judgements. (M 1)

In relation to the content of the written evidence, the judges discussed the professional 'knowledge' they thought LASWs should bring to their evidence, particularly in the context of LASWs being perceived (or not) as experts. The DJs discussed the impact of experience and inexperience on LASWs' ability to provide what they viewed as good quality evidence, as well as the LASW being the LA representative in court:

... people should have confidence in their own ability and know what you don't know... I see some very good pieces of work from newly qualified people... the only thing I would say is that their conclusions are usually far too optimistic in terms of their experience... (DJ 2)

I made the point... about expertise and about newly qualified social workers not being the experts in attachment... this is the local authority's evidence and that expertise is likely to be available elsewhere within that team. (DJ 1)

One CJ referred to the changes in use of independent expert witnesses, highlighting the importance to them of well-articulated professional SW knowledge, to 'anchor' the legal decision making in the absence of other, clinical assessments:

In the old days we would have had assistance from a psychologist who would have given you the material. So if we are discouraged from obtaining that, and we're saying the social worker has the necessary expertise, you want them to be able to explain attachment... so if you're going to be putting your final decision based on emotional harm, you've got a firm foundation upon which you can then base a decision. (CJ 1)

Across the judicial groups, particular importance was placed on LASWs demonstrating knowledge and application of attachment theory in their evidence about children and families:

I think attachments are an interesting issue. Attachments are an expert view, and they [SWs] are meant to be, to a certain extent, our expert in court. (DJ3)

...social workers are probably fine dealing [with] the more normal attachments, and they'll be able to gauge good attachment... And then you've got very disorganised, bad attachments at the other end of the spectrum ...the young ones

are going to have to hold up their hands and say I haven't got prior experience of this. The managers may have to hold their hands up... and bring in the expert... I mean... what are they experts in? I think they are to a degree in attachments, they won't know all the answers, but I think they are. And they've got to be confident about being able to express that. (DJ4)

(CJ2) ...but as you say you often get a situation where they'll say a social worker can't do attachments, we need a psychologist.

(CJ3) but why can't the social worker do attachments?

(CJ2) exactly

(CJ3) they should be able to.

These discussions in the DJ and CJ focus groups expose a rather simplistic and potentially flawed articulation by the judges of key aspects of attachment theory and its application in social work practice (Shemmings 2016). This is discussed further in Chapter 10 at p.288.

### ***5.3.3 (b) Communication (written evidence): Content - 'knowing the family'***

'Knowing the family' was a strong theme throughout each of the judicial focus groups, explicitly associated with positive evaluations of SW practice and evidence.

As a group, the magistrates agreed that the inclusion of a clear chronology and a family tree in written evidence (both expected within the SWET) assisted them in their understanding of the case and their decision-making. The magistrates explained that

these features also demonstrated to them the extent to which the LASW had engaged with and got to 'know' the family and the case:

Sometimes you can get a family tree and again you know that whoever has written it knows the family. (M 2)

...a really good case chronology, clearly laid out, which leads you through the reading of it from the beginning to the end so that you get a picture. That good clear case chronology for me spells out somebody who knows precisely what they are doing. (M 3)

The magistrates discussed that features of good quality and/or expert LASW written evidence included the application of a professional knowledge base along with a deep knowledge of the family members, suggesting a relationship-based approach to 'knowing' families in addition to the family structure and background to the case:

...they know the family. Not just the bare bones, they know the family's ins and outs, the dynamics... you know they are an expert in it because they know their stuff. (M 2)

In relation to the content and presentation of LASWs' written and oral evidence, the judges also emphasised the importance of LASWs 'knowing the family' and 'knowing the case', linking this with their evaluations of the LASWs as professional witnesses:

...when they give their evidence I would expect them to know the case. Not just what they put in the witness statement, I would expect them to know the case... by and large they do know the facts and the can answer the questions without reference to notes, which tells me that they do know the family and the case. (DJ 2)

There were some criticisms of LASW written evidence in the focus groups. Issues highlighted included inexperienced LASWs adopting a proceduralised approach to their written evidence, that did not demonstrate that they ‘knew’ the child and the family:

I think there’s still too much pro forma box ticking, that often you don’t get a feel of events from the child’s perspective. You don’t have a real picture of the child, or even of the parents often. And I think that is down to experience, a lot of the social workers who are doing it are very inexperienced and they’re just covering the bases, (CJ 3)

In this example, a lack of experience combined with a perceived formulaic approach to written evidence resulted in an evaluation that whilst ‘good enough’, the LASW evidence probably would not be evaluated as demonstrating expertise. Comparisons were made in the CJs’ focus group with other cases in the past, where experienced LASWs and independent social workers, usually with significant practice and court experience, provided written and oral evidence that was not constrained by required templates for written evidence and, according to these judges, was more likely to be perceived to be ‘expert’. The aim of the SWET is, in part, to promote consistency in LASW written evidence, to support swifter and more efficient proceedings (ADCS 2016). However, the CJs’ focus group discussed that the tendency towards a formulaic approach to written evidence could impact on how they perceived the LASW written evidence in some cases, suggesting that consistency does not always determine quality:

...we’ve lost some of the idiosyncrasies but some of them were quite useful idiosyncrasies! You felt there was a real person filling in this form and a real child and a real parent and I think we might have lost some of that. (CJ 3)

### **5.3.3 (c) Presentation (written evidence): Format - the SWET**

The magistrates' focus group included some discussion of and concern about issues such as spelling, grammar and typographical errors. The magistrates linked these concerns to the 'high stakes' decision-making in care proceedings, inferring that such errors might indicate the LASW had not taken sufficient care with their written evidence, which could affect judicial perceptions of professionalism:

...it's the actual grammar, sometimes the structure is so unlike what you would expect from a professional report... I am very loath to criticise the writers of reports particularly because on the whole you get the gist of it, but then when you're dealing with something as important as children being taken away from their parents and placed elsewhere, there's just no room for error. (M 1)

However one magistrate expressed a strong view, based on their own experience of dyslexia, that content rather than presentation of evidence should be the important aspect in evaluating the quality of written LASW evidence:

Those reports are for information, as one of my colleagues said it's a very draconian step to take a child into care... we should do it off the information that is provided... (M 4)

Issues of presentation in LASW written evidence were not raised in the other judicial focus groups, perhaps reflecting differences in focus of evaluation between the legally qualified DJs and CJs, and the lay magistrates. It is possible that the magistrates in this study felt more comfortable critiquing the structure and presentation of written evidence, rather than the 'professional' content of SW assessments and care planning recommendations. Additionally, lay magistrates will rely on their legal adviser for legal or evidential points in a case, and therefore would not necessarily evaluate the LASWs'



understanding of these issues. In contrast, the DJs and CJs expressed views about how LASWs could create a good and even expert impression in relation to their written evidence, highlighting the importance of LASWs ensuring that they prepare and present their professional analysis and opinion in a way that demonstrates an understanding of evidential requirements and standards:

... when they're preparing the witness statement and their assessments if they could just have at the back of their mind that this is evidence, can I prove this on the balance of probabilities... It's all part and parcel of giving confidence and training themselves to remember that what they're saying is evidence, thinking of it as evidence (DJ 2)

#### ***5.3.3 (d) Communication (oral evidence): Preparation – (in)experience and judicial expectations***

Effective preparation for court hearings was considered important in relation to how well the LASW was likely to perform in the court setting:

...preparation will give them confidence, it will allow them to relax and it will ensure that they give better evidence than they would do if they went in there on a wing and a prayer, without that degree of preparation... (DJ 1)

However, effective preparation is likely to be challenging if LASWs have little or no experience of the processes and practices involved in contested hearings. Inexperience in giving oral evidence and being cross-examined in contested hearings was identified as a particular issue for both newly qualified LASWs and longer-serving LASWs who had not faced contested proceedings:

...you do get inexperienced social workers because that's the nature of the game. You only get more experience as you do it... and you begin to be very good at picking up the nuances from other people, as you start seeing your work either used or not used, criticised or not. (M 1)

One CJ commented on their experiences of cases where LASW witnesses were expected to present oral evidence and be cross-examined in contested hearings, when their involvement with the case was limited:

...the ones who struggle are the ones who have usually been lumbered with the case a couple of weeks before it comes to court...they've read it and they are prepared, but they haven't got any feel for the family... I often think a manager should come along in that situation and give the local authority's evidence, rather than the new social worker. They don't know the family so when they're asked questions, they can't answer them. (CJ 3)

The judges commented that good LASW oral evidence included an ability to summarise their case and the reasoning behind their recommendations at the start of their evidence:

I often ask social workers just to give an overview in summary form, four or five sentences, as to why they've reached the view they have. And it's a tough call for them but it's quite good to try to use brevity and select, whittle it down. Some can do that very well but others struggle amongst the mass that they've written, to abbreviate it. (CJ 4)

In this example, a contrast is drawn between a perceived 'mass' of written evidence and a brief overview summary. This suggests that the desired summary is not usually provided within the written evidence (SWET). However, it may also be that judges wish LASWs to explain their case briefly in their evidence in chief, to set the scene, to

assist the judge within a time-pressured process, to assist the parents and perhaps other parties in the proceedings:

...so many of these parents have difficulty reading and you are assuming that solicitors have gone through all the detail of all the reports in a way that they can understand... the pressure these days on solicitors is that they don't have time to do that... So I think it is important that the social worker gives a brief explanation, it's the sort of thing we were saying we'd like to see in the written document, a summary... the principal headings, as to why these children can't go back to the parents, if that is to be the case. (CJ 1)

### ***5.3.3 (e) Presentation (oral evidence): Performance – demeanour and emotions***

Presenting as a balanced witness and being prepared to make concessions when appropriate was emphasised within the group of DJs as a positive feature of LASWs as professional witnesses. The judges also suggested that LASWs should 'trust' the court, suggesting that they preferred a measured, thoughtful approach to giving oral evidence, wherein the LASW's role was to assist the court with its decision making:

...that's the biggest failure... not being prepared to make concessions where they should be made. People trying to defend the indefensible. If a social worker has not done a particular piece of work... just say yes I can see now I ought to have done that, rather than try to justify why they didn't. (DJ 1)

... you've just got to be neutral, balanced, and trust the court. And not be afraid to make concessions where concessions should be made but highlight the concerns and put the trust in the court. (DJ 4)

One magistrate identified that a lack of knowledge about ‘court room procedure’ was likely to contribute to an emotional response (upset) from LASWs when subject to focussed cross-examination techniques:

...we see them sometimes nearly in tears in the court room, being questioned... forensically questioned, you feel sorry for them because they are all untutored in court room procedure... (M 4)

The CJs described it as uncomfortable to observe if the LASWs ‘crumbled’ or if they became overly confident in their presentation, described below as ‘bombastic’. Both types of presentation are clearly linked by the judges with an evaluation that the LASW not performing ‘well’. However, they then go on to explain features (for them) of a ‘very good’ professional witness which in these examples are balance, confidence, empathy or compassion for parents who may lose their children, and clarity of expression:

...social workers can sometimes crumble under cross-examination, such that it’s uncomfortable and embarrassing... or it can be the other way, they can be too bombastic and overconfident. I suppose it’s the balance... If they can argue the pros and cons, and also make concessions, and say well it isn’t clear-cut... but on balance clearly, and sadly... and that’s the gem when you can get that balance. And when you hear someone who is very good it’s really heartening. (CJ4)

I don’t want them to be bombastic, I don’t want them to be belligerent, but I want them to be confident in what they’re saying. If their view is that the parents are deficient, notwithstanding all the things that they’ve gone through, if their

view is that they need far more time than would be permissible for the child...  
say it, in clear terms. All too often it's said in a very unconvincing way. (CJ1)

The judges also discussed the potential emotional impacts of the legal process and the court environment on LASWs (and on themselves as decision makers), especially those LASWs with limited experience of contested hearings:

... the less experienced social workers also find it quite difficult to stand there  
and say I have reached the decision that this child cannot go home... they find it  
hard, as I think judges find it hard... to be really quite tough about they're  
observing and what their recommendations are. That's human nature... (CJ 3)

The potential for emotional impacts on the judiciary in care proceedings is mentioned in the quote from the CJ above. This is discussed further in Ch 10 (p.301), in relation to the emotional labour (Hochschild 1983) involved in SW with families and children, and in judicial practice.

## **5.4 Implications for Phase 2 data analysis**

Phase 1 data analysis identified the particular relevance of *communication* of LASW expertise within care proceedings, via the content of written and oral social work evidence, across disciplinary boundaries. This highlighted a need (in this study) to differentiate the communication of expertise from theoretical approaches relating to the *development* of expertise generally (for example, Dreyfus and Dreyfus 1986; Ericsson et al 2018) and in SW practice (for example, Fook et al 1997 and 2000). This led to the identification of Collins and Evans (2007) theory of expertises as an appropriate theoretical focus for data analysis in Phase 2.

Phase 1 analysis also illustrated the relevance of the *presentation* of professional expertise by LASWs as professional witnesses giving oral evidence, with an emphasis on the *performance* of an ‘expert professional self’ in the courtroom environment during contested hearings. References within the data to preparation, presentation and performance prior to and during oral evidence supported the application of Goffman’s (1959) dramaturgical theory as a supplementary theoretical focus. In particular, interpretation of the Phase 1 data led to the identification of concepts of ‘backstage’ preparation and the application of impression management techniques for a ‘frontstage’ presentation/performance in the courtroom as useful to apply alongside Collins and Evans’ (2007) theory of expertises, within Phase 2 analysis.

To provide some background information for the presentation of Phase 2 data in Chapters 7, 8 and 9, the next chapter provides a summary of each of the sample cases.

## CHAPTER 6: THE SAMPLE CASES AND OVERVIEW OF THE CONTESTED FINAL HEARINGS

In this chapter background details of the sample cases are provided. Potentially identifying characteristics of the cases have been disguised in accordance with ethical requirements relating to confidentiality and anonymity. The main issues and processes in the contested FHs are summarised for each case. A summary of the LASWs' level of practice experience is provided in Appendix P. (p.374).

### 6.1 Case 1

#### **Box 6.1 Case 1 - summary**

This case involved a 5-month-old child removed shortly after birth under an Interim Care Order, due to risk of neglect by the child's mother. The mother had learning disabilities and was represented by the Official Solicitor (OS). The child's father had been in a short-term relationship with the mother, which ended before the child was born. The LA's application was for a Care Order with a final care plan to place the child with maternal relatives, with a view to a possible Special Guardianship Order, in the future. The care plan proposed ongoing contact for the child with both parents. The OS, on behalf of the child's mother, did not contest the final care plan. The child's father contested the placement aspect of the final care plan fully, proposing that he should assume care of his child, under any order that the court may make, including a Care Order. The Children's Guardian supported the LA care plan.

LASW1 had been qualified for 3 years, and had been practising as a social worker for 2 years. This was the LASW's 3rd set of care proceedings, but the first case that was contested at final hearing. LASW1 had some experience of preparing written evidence but no experience of giving oral evidence, prior to this case. LASW1 had completed basic court skills training as a newly qualified SW. LASW1 was represented by a LA solicitor throughout this case, with a barrister (from local chambers) instructed by the LA for the Final Hearing.

The FH was listed for three days and included lengthy pre-court discussions on day 1.

These were not observed in full, due to a clash in listing of Cases 1 and 2. The LASW

evidence was observed on day 2, and the written judgment was delivered on the

afternoon of day 3. There was no independent expert evidence in the case, other than a

preliminary psychological assessment of the mother's capacity to take part in the proceedings, which led to the instruction of the Official Solicitor on her behalf.

The FH focussed on the LASW's assessment of the father, who was contesting the LA application and the proposed care plan for the child (the OS on behalf of the mother was not contesting the care plan). Analysis of the final written evidence indicated that LASW1 had conducted a comprehensive assessment process with the father (seven assessment sessions, which were all attended by the father). Her assessment report and the final SWET included an explicit 'balancing exercise' of protective factors and risk indicators. LASW1 included several comments in each document about the father's positive commitment to the assessment process, his obvious love for his child, his strengths in providing basic care within supervised contact and his genuine desire to assume care, with whatever support was deemed necessary (LASW1 final written evidence Child and Family (SW) assessment of father).

LASW1 had not given oral evidence in a contested hearing before. LASW1's responses to questions from the LA barrister during her evidence in chief suggested that she knew the father well; she acknowledged his strengths and she explained the vulnerabilities and limitations that led her to conclude that the child should not be placed with him. LASW1 was cross-examined by the barrister for the father and the barrister for the child. The mother's solicitor did not ask any questions of LASW1 in cross-examination. The main focus of cross-examination of LASW1 was in relation to LASW1's assessment of the father, with the majority of the cross-examination questions being posed by the father's barrister. The father's barrister criticised LASW1's use of a particular assessment tool containing statistical references to 'being male' as a risk factor (discussed at p.194). LASW1 answered cross-examination questions calmly and confidently, providing detailed and specific information drawn from her discussions



with the father during assessment sessions, as well as information from other agencies such as the housing department, and observations of his contact with the child. The judge interjected on several occasions during cross-examination of LASW1, to ask ‘clarification’ questions (p.261)

LASW1’s responses to the lines of cross-examination by the father’s barrister and the questions from the judge appeared to be accepted as satisfactory, in that they were not pursued further, suggesting that LASW1 was generally perceived positively as a witness (Observations Case 1 FH day 2).

## 6.2 Case 2

### **Box 6.2 Case 2 - summary**

This case involved 2 half siblings aged 7 years and 1.5 years. The children’s mother previously had sole care of both children, until they were removed from her care by the Police. Following this, the mother agreed to the children being accommodated by the LA under CA1989 s.20 and a plan for the children to return to the mother’s care, after a period of work with the mother, was in the process of being formulated. However, care proceedings were issued due to another precipitating incident, involving assessed risk of neglect and emotional harm by the mother. Neither of the fathers of the children participated in the care proceedings, although both were served with the papers. The children were placed together, with foster carers. The LA’s application for the older child was for a Care Order, with a final care plan of long term foster care (with the current foster carers) and ongoing contact with the mother. The LA made applications for a Care Order and a Placement Order for the younger child, with a final care plan of placement for adoption, thereby separating the half-siblings. The children’s mother fully contested the care plans for both children. The Children’s Guardian supported the LA care plan.

LASW2 had been qualified for 8 years and she had completed a Post Qualifying Specialist Award in Child Care Social Work. LASW2 had extensive experience of care proceedings, including preparing written evidence and giving oral evidence in contested hearings, during employment in two local authorities. LASW2 was represented by a LA solicitor throughout this case, with a barrister (from local chambers) instructed by the LA for the Final Hearing.

The FH was listed for two days and included pre-court discussions on day 1. LASW2’s evidence was observed on day 1. The evidence of the parents and the CG was heard on day 2, however this could not be observed due to a clash in listing of Cases 1 and 2. The

written judgment was delivered in separate hearing 1 week later. There was no independent expert evidence in the case.

The FH focused on LASW2's assessment of the mother and her rationale for the proposed plans to separate the siblings. LASW2's written evidence contained explicit reference to theory and research underpinning her recommendations. LASW2 had substantial experience in care proceedings and she had given oral evidence in contested proceedings several times previously. Cross-examination of LASW2 was mainly by the mother's barrister, however there were also many interjections by the judge, including questions of clarification as well as 'discursive' exchanges between the judge and LASW2, specifically about potential issues of separation, loss and identity for the siblings in relation to the proposed different permanence plans. Overall, LASW2's demeanour while giving evidence in chief and when being cross-examined was relaxed, authoritative and demonstrated 'kindness' towards the mother in the case. LASW2 appeared to move easily between direct cross-examination questions from the mother's barrister and the frequent interjections by the judge. LASW2's responses to questions appeared to be accepted by the lawyers and the judge, suggesting that she was viewed positively as a professional witness (Observations Case 2 FH day 1).

### 6.3 Case 3

#### **Box 6.3 Case 3 - summary**

This case involved an 8 month old child, who became Looked After immediately after birth, due to assessed risk of neglect and emotional harm by the mother. The child's mother agreed to accommodation under CA1989 s20 after the birth, and the child was placed with foster carers. The LA issued care proceedings immediately and an Interim Care Order was granted within days of the child's birth. The child's mother had a history of mental health issues. The mother's older child had been previously removed and placed with foster carers under a Care Order, due to assessed neglect and risk of emotional harm by the mother. The child's father had previously been in a short term relationship with the mother, which ended prior to the child's birth. LASW3's assessment of the father was negative. The LA's applications were for Care and Placement Orders with a final care plan of placement for adoption. The child's mother and father both fully contested the care plan. The Children's Guardian supported the LA care plan.

LASW3 had been qualified for 14 years. She had previous experience of care proceedings, with some cases listed to be contested at final hearing. However all of these cases became 'agreed' at the final hearings and so none proceeded to a fully contested final hearing. Consequently, whilst LASW3 had experience of preparing written evidence for care proceedings, she had never previously given oral evidence in a contested hearing, prior to this case. She had previously completed some basic court skills training around 7 years prior to this case. LASW3 was represented by a LA solicitor throughout this case, with a barrister (from local chambers) instructed by the LA for the Final Hearing.

The FH was listed for three days and included pre-court discussions on day 1.

LASW3's oral evidence was observed over days 1 and 2. There was also independent expert evidence (a written report) from a psychologist, who had been instructed to assess the mother's level of cognitive functioning as well as to conduct a full psychological assessment for the case. The assessment and recommendations of independent expert were aligned with the recommendations of the LASW and the CG. The expert's written evidence was agreed by the parties, and so the independent expert was not required to attend court and be cross-examined. The written judgment was delivered in a separate hearing 3 weeks later.

LASW3 was an experienced social worker with substantial experience of care proceedings. She had prepared for contested hearings previously, however she had not

been required to give oral evidence before, as those cases had become ‘agreed’ and were concluded without a contested hearing.

The FH focused on the LASW’s (separate) assessments of the mother and the father in the case. LASW3’s written evidence in relation to the mother and the father was balanced and included acknowledgment of positives for each. There were frequent questions from the judge to LASW3 during LASW3’s evidence in chief and cross-examination by the mother’s barrister, father’s barrister and the barrister for the child. These were predominantly questions of clarification of LASW3’s responses to cross-examination questions, but also included questions from the judge about how LASW3 had balanced individual risk factors within her overall assessment (Observations Case 3 FH day 1). No questions about the SW knowledge underpinning the care planning recommendations were put to LASW. LASW3 presented as calm, confident, polite and at ease in the courtroom. Her responses in cross-examination, and her answers to questions from the judge appeared to be accepted, suggesting she was viewed positively as a professional witness within the case.

## 6.4 Case 4

### **Box 6.4 Case 4 - summary**

This case involved an 8 year old, a 6 year old, and 3.5 year old twins. The children's mother had sole care of all the children prior to agreeing to CA 1989 s.20 accommodation. Care proceedings were subsequently issued due to allegations of physical and emotional harm made against the mother by the children whilst in foster care. The allegations were made to the foster carers and the social worker. The father of the 2 older children and the father of the twins were both involved in the proceedings. The LA applications were for Care Orders in respect of all the children. The final care plan for the older 2 children was long term foster care, with ongoing contact with both parents. The final care plan for the twins was placement with the paternal grandparents, with the possibility of a Special Guardianship Order eventually, and ongoing contact with both parents. The mother fully contested the care plans for all four children. The father of the older children supported the LA care plan. The father of the twins put no active case to oppose the care plan. The Children's Guardian supported the LA care plans.

LASW4 had been qualified for 4 years. She held the position of 'Advanced Practitioner' within her LA, meaning she would be allocated more complex case work and she would be responsible for supervising less experienced LASWs. LASW4 had previous experience of care proceedings, including preparing written evidence. However, LASW4 had limited experience of giving oral evidence. She had given oral evidence once before in a contested final hearing, which was described as 'low key' and 'not fully contested'. LASW4 had also given oral evidence once during a contested EPO application. In this instance, LASW4 had given oral evidence on a colleague's case, so her evidence was limited. LASW4 had not completed any court skills training (she had previously been scheduled to do so, but she could not attend due to an Ofsted inspection at her LA). LASW4 was represented by a LA solicitor throughout this case, with an in-house (LA) barrister instructed for the Final Hearing.

The FH was listed for three days and included pre-court discussions on day 1. The LASW evidence was observed on day 2. There was also independent expert evidence (a written report) from a psychologist, who had been instructed to conduct a full psychological assessment for the case. The assessment and recommendations of the independent expert were aligned with the recommendations of the LASW and the CG and, as the parties agreed the expert's written evidence, the independent expert was not required to attend court and be cross-examined in the case. LASW4 was an experienced social worker with 'Advanced Practitioner' status within her LA. Whilst she had experience of care proceedings, and some limited experience of giving oral evidence,

LASW4 had not previously been cross-examined on her own practice and assessments, within contested care proceedings.

LASW4 was taken through her evidence in chief by the LA barrister, and then cross-examined at length by the barrister for the mother. The solicitor for the children also cross-examined LASW4, however as the CG was supportive of the LA care plans, this was not an extensive process. The judge interjected on a few occasions during cross-examination of LASW4, asking clarification questions (see p.261). Observations of LASW4's oral evidence suggested that she misunderstood the purpose of evidence in chief. She gave long answers to questions from her barrister, that were not focussed on what she had been asked. LASW4 also appeared to be using her answers to make points 'against' the mother. During cross-examination, LASW4 appeared unable or unwilling to acknowledge any positives in relation to the mother, including that the mother might love her children, giving the impression that she lacked balance and empathy in her approach, and was 'biased' against the mother. This was highlighted by the barrister for the mother in submissions at the end of the FH, when the barrister invited the court to find that LASW4's evidence was 'flawed' and entrenched against the mother in the case. This is discussed further in Chapter 10 (p.302). LASW4's presentation during her oral evidence, did not give the impression of a balanced and empathetic professional witness and overall it appeared that her 'performance' in oral evidence was not viewed positively.

The written judgment was delivered on the afternoon of day 3 of the FH. Despite the issues identified with LASW4's written and oral evidence, the judge granted the LA's application and approved the care plans as recommended by LASW4. These issues are discussed further in the following chapters.

## **CHAPTER 7: LOCAL AUTHORITY SOCIAL WORKERS' EVALUATIONS OF THEIR WRITTEN AND ORAL EVIDENCE IN THE PHASE 2 SAMPLE CASES**

### **7.1 Introduction**

In this chapter, the focus is the LASWs' evaluations of their written and oral evidence in the Phase 2 sample cases. Data are presented from interviews with the LASWs, observations of the contested FHs, and analysis of LASW written evidence in each of the sample cases.

An outline of the LASW data sources for the four sample cases is provided in Appendices Q-S (p.375-377). Analysis of the LASW data involved triangulation of data from observations of the LASWs during pre-hearing discussions, their responses to questions during evidence-in-chief and cross-examination in oral evidence, LASW interviews after the FHs, and analysis of the written LASW evidence. Analysis focussed on the LASWs' comments about how they prepared and presented written evidence and their own evaluations of the content and features of their final written and oral evidence in the cases.

The Phase 1 themes of communication and presentation were reflected across the Phase 2 data. Developing the analysis on from Phase 1 (as outlined in Chapter 5), analysis of the Phase 2 data led to the main themes of communication and presentation being combined, with separation of sub themes in relation to LASWs' evaluations of their written and oral evidence, as set out below in Table 7.

Preliminary links with relevant literature, theoretical understandings of expertise (predominantly Collins and Evans 2007), and considerations of performance and

impression management as discussed by Goffman (1959) are also discussed here, beginning a process of theoretical re-description of the data, within a critical realist research framework (Fletcher 2017). This is developed further in Chapter 10.

**Table 7. LASWs' evaluations of their written and oral evidence: themes and sub themes**

THEMES	SUB THEMES
<b>Communication and presentation (written evidence)</b>	<p>Social work knowledge</p> <ul style="list-style-type: none"> <li>• use of theory, research and assessment tools</li> </ul> <p>Legal knowledge</p> <ul style="list-style-type: none"> <li>• The SWET, Re B-S and awareness of the legal process</li> <li>• Having the court 'in mind'</li> </ul> <p>'Knowing the family'</p> <ul style="list-style-type: none"> <li>• demonstrating a balanced, compassionate approach with families</li> <li>• presenting as a credible and reliable witness</li> </ul>
<b>Communication and presentation (oral evidence)</b>	<p>Preparation</p> <ul style="list-style-type: none"> <li>• Preparation for giving oral evidence</li> <li>• Learning from experience</li> </ul> <p>Performance</p> <ul style="list-style-type: none"> <li>• Creating a good initial impression</li> <li>• The court environment, demeanour and nerves</li> </ul>



## **7.2 LASWs' evaluations of their communication and presentation of written evidence in the sample cases**

### **7.2.1 Communication and presentation (written evidence): Social work knowledge - use of theory, research and assessment tools**

The LASWs described that they included SW knowledge in written evidence, to demonstrate informed decision-making. However, they expressed ambivalence about whether they would include explicit references to specific SW theories and research in their evidence, highlighting concerns about potential challenge to their knowledge claims, in contested cases.

It's always that battle isn't it, people say you should provide research, to evidence and backup your decision-making, and then other times I've been in court where I've said one thing and then they bring something else that contradicts it. I've certainly had it before that they pick up anything that you use research-wise and just hone in on it. (LASW2 Interview 2)

I will draw on research, but I am aware you have to be careful in court because someone will come up with the alternative research for it... it's about making sure that you analyse properly and don't just pluck up your own ideas out of the air... it has to be based on research, evidence-based practice. (LASW3 Interview)

LASW1 highlighted feelings of fear and anxiety when preparing written evidence, particularly if referring to 'attachments' and contemplating a potential 'performance' as a professional witness within the legal process. This emotional aspect of the LASWs' experiences of being a professional witness will be discussed further at p.301.

People are scared to death to write attachment... because we're frightened if we mention attachment that [lawyers] are going to jump all over that and start throwing in Bowlby and all sorts of conflicting theories at us that we're just going to shrink under... I think it's anxiety provoking for social workers... I think it opens the floodgates to more difficult cross-examination [but] as long as you have understanding and you are able to communicate in a clear way, you could defend it. (LASW1 Interview 2)

These examples demonstrate that the LASWs had the court 'in mind' when preparing their written evidence, and that they understood that theory or research-based content within their written evidence had the potential to demonstrate their underpinning knowledge base. However, they were also concerned that this might result in specific challenges in cross-examination, if the case became contested. Accordingly, the LASWs' comments suggest a somewhat defensive and 'wary' approach to the prospect of potentially difficult questions in cross-examination about their applied knowledge-base. LASW4 also highlighted the challenge of including SW knowledge, balanced with the need to produce concise written evidence, as required within the SWET (ADCS 2016):

[social work evidence] should probably contain reference to theory... because it's supporting from a research perspective what you are saying and why it's important. Because otherwise you're making sweeping statements, for example the impact of domestic violence on children's emotional well-being, if you relate it to theory it gives it much more weighting. But you don't have the space... to write everything you want to write. (LASW4 Interview)

Case 2 was the only example in the study where the LASW made explicit references to specific aspects of SW theory and research in their initial and final written evidence. This indicated that LASW2 was seeking to demonstrate her knowledge and application of an appropriate research evidence base within her assessments and her recommendations to the court. Some, but not all references to theory and research included citations, and LASW2 could have been criticised from an academic and a legal perspective for not identifying all of her sources, which would have enabled the judge, the parties and their representatives to check the basis of her knowledge claims. Nonetheless, LASW2's initial written evidence demonstrated evidence based thinking within her assessments, and gave the impression of a knowledgeable, experienced and arguably expert SW practitioner (LASW2 Initial written evidence – Initial SWET). In other words, LASW2 was 'performing' recognised features of expertise, by giving the impression (at least) of mastery and application of a body of professional knowledge in the presentation of her written evidence (Fook et al, 2000; Goffman 1959).

In her final written evidence, LASW2 also cited relevant sources of SW knowledge in support of her recommendations for final care plans, which included research and sector-specific practice guidance relating to the separation of the siblings. (LASW2 final written evidence - Final SWET). LASW2 was not cross-examined in relation to these sources, nor did she refer to research or theory in her responses to questions about the proposed care plans. However, during both her evidence in chief and cross-examination by the mother's barrister, LASW2 was asked frequent questions by the judge about the issue of separating the siblings. The judge made specific reference to attachment theory and to research knowledge about outcomes for children who are adopted or placed in foster care, and outcomes where siblings may be separated or

placed together. This is discussed further in relation to the judicial evaluation process in Chapters 9 and 10.

Reference to specific SW risk assessment tools within written evidence was highlighted as potentially problematic in Case 1. LASW1's final written evidence included a risk assessment of the father, within which LASW1 had applied an assessment tool containing a checklist of risk and protective factors, used routinely in cases in her LA (LASW1 final written evidence – SW assessment of father). LASW1 was subsequently cross-examined by the father's barrister, with questions predominantly about the content of this assessment document, including the stated evidence base for risk factors in the checklist, which included 'being male' as a statistical risk in child abuse cases. In her responses, LASW1 appeared visibly uncomfortable with the suggestion that she would assume risk because someone was male. LASW1 attempted to explain to the judge that this was only one factor in the checklist of risk and protective factors contained within the assessment tool and was not a determining factor in her overall assessment of specific risks relating to the father (Observations Case 1 FH Day 2). In her interview after the FH, LASW1 expressed regret that she had not noticed this aspect of the assessment tool checklist within her written evidence. She explained her view that the assessment tool was 'evidence based', as it was informed by learning from Serious Case Reviews and research, and it was endorsed by her Local Safeguarding Children's Board. She also outlined how she might do things differently in future, based on the experience of being cross-examined on this issue:

I know under cross-examination... [lawyers] always try and find something to undermine the assessment, I understand that... I think next time when I do my children and families assessment I'm going to be quite careful about putting things like that in, because it is quite misleading. I didn't recognise that before,

because obviously it's a tool we've adopted here in [LA1] to help us with our support planning for families. But obviously within the court arena... it doesn't really carry over very well. (LASW1 Interview 2)

This example illustrates how lack of experience of *contested* court hearings limited the LASW's understanding and appreciation of aspects of the evidential processes involved. This resulted in an opportunity for a challenge to the LASW's expertise in her practice (in the application of the risk factor checklist) and in her communication of this within her written evidence, within cross-examination. This experience led LASW1 to reflect on the assumptions she had made, due to a lack of specific experience of contested hearings:

Those sorts of tools are really normalised in our practice... we use [them] on a daily basis when writing assessments, when planning for families, so to be questioned on that...I just didn't even expect it. I think I felt that they would just accept it as [an] evidence-based tool, which it is because it's come from serious case reviews. And I had to defend it a little bit in court and say you're taking each one in isolation, but it's about all the risks and the cumulative effect of that on the child... when I said that he did back off a little bit... But I think it caught me off guard a little bit just because I didn't expect that of all the things that were written, that was something that they might ask me about... (LASW1 Interview 2)

Although LASW1 had been involved in care proceedings previously she had never experienced a contested hearing. In Collins and Evans' (2007) terms, whilst it is clear from the data that this LASW had Reflective Ability in relation to her social work practice, it is not surprising that she lacked sufficient Interactive Ability as to how

‘minor’ aspects of her written evidence could be potentially contentious within contested proceedings. In particular a lack of experience in contested proceedings meant she did not know that she should ‘expect the unexpected’ during cross-examination. In her interview, the LASW reflected on this and demonstrated that she had learnt from her experience:

...the other hearings I’ve been on, none of them have been contested... it’s been a learning curve... (but) I actually understood what was going on in the court and what they wanted from me, which was really helpful. (LASW1 Interview 2)

LASW1’s written evidence had been ‘signed off’ by her manager and her legal department, within in-house evaluation and quality assurance processes, prior to being filed with the court. However, the inclusion of this particular, and as it turned out contentious, risk factor in her assessment had not been highlighted or discussed with her. In a subsequent discussion between them about this issue, LASW1 described how her manager had explained that she should only include in her written evidence those risk factors that were significant and relevant (to the case), rather than the full scope of possible risk factors as set out in the assessment tool. In relation to being told this ‘after the event’, rather than during the in-house evaluation by her manager, LASW1 commented:

She said that she hadn’t picked up on it on this occasion [when reviewing the written evidence]... it’s a learning curve isn’t it. So it’s something that I’ll be mindful of next time. (LASW1 Interview 2)

### **7.2.2 Communication and presentation (written evidence): legal knowledge - The SWET, *Re B-S* and awareness of the legal process**

LASWs' knowledge of and familiarity with legal processes and legal requirements, in particular how to navigate the legal processes in contested hearings, also influenced decisions about what to include in written evidence.

I think until you understand the court processes it's really difficult to know what to write... for my first hearing I knew what an interim care order was and those sorts of things, but I'd never been through the process. I'd never seen the discussions in court and the things that the court will pick up on and it's a learning curve every time... they might pick on one tiny bit and the next time you're really careful to cover that properly. (LASW1 Interview 2)

In this example, LASW1 identified that 'baseline' legal knowledge such as types of orders was insufficient to prepare her for the requirements of the legal process in contested care proceedings. In other words, appropriate 'socialisation' in the processes and legal requirements of care proceedings was required to promote effective communication via the written evidence (Collins and Evans 2007).

The SWET requires LASWs to address specific legal requirements about analysing 'realistic options' for the child, which derive from the judgments in *Re B* and *Re B-S*. This was reflected in the data. For example, LASW3's written evidence explicitly addressed the required range of realistic options for the child, including reunification with the birth parents, in line with the case law. LASW3 set out the factors in favour and against each option, and she also highlighted the application of the welfare

checklist (CA 1989 s.1(3)) in concluding that reunification with birth parents was not viable for the child (LASW3 final written evidence - Final SWET). Whilst the SWET structure provides a framework for expressing legal requirements within written evidence, it is to be expected that the quality of the content provided would depend (at least in part) on the level of understanding the LASW had of the legal framework. In this example, LASW3 demonstrated a good understanding of the requirements from *Re B* and *Re B-S*, also drawing on her experience in a previous case, which applied when preparing her evidence:

I'm always considering what support we do have and what can be looked at... But always being realistic, because I know case law is about being realistic as well. I know that *Re B-S* [means] having to explore every avenue, factors for, factors against when I'm writing up the final evidence... I guess it's based on experience as well, and another [case] I did probably 12 months ago, I was asked to do a support plan of what we could put in place for the parents. So I wrote that support plan up and said – but that won't be sufficient, that won't keep this child safe. So you're always looking at what support can we realistically put in place, and is that sufficient? (LASW3 Interview)

Another example from the data provides a contrast to this. LASW4 omitted from her written evidence anything about the support that could (or could not) be offered, if the children were to be returned to their mother's care, thus failing to address the legal requirements in *Re B-S* (LASW4 final written evidence - Final SWET). This was despite LASW4's written evidence being 'signed off' by her manager. LASW4 said she was unsure what her manager might be looking for in 'signing off' her written evidence, however she thought the manager would look for 'a clear analysis and rationale for the decision that's made' (LASW4 Interview). LASW4 did not identify



that her manager would or should ensure that the evidence addressed the legal requirement to provide an analysis ‘compliant’ with *Re B-S* and indeed it appeared that the manager had not identified this omission during her in-house’ evaluation, before the written evidence was filed with the court. A lack of effective management scrutiny and challenge could explain why LASW4 did not address these legal requirements in her evidence, despite the structure and format of the SWET encouraging her to do so. LASW4 explained in her interview after the hearing that she had not often been asked to amend or improve her written evidence by her manger:

... generally my assessments are always approved... (for) some people she’ll go back and say you need to look at this, you need that, there’s nothing in about this, but I don’t generally have that, she always comes back and says yeah, fine off you go. So in that sense, you don’t know if there’s things you could have done differently. (LASW4 Interview)

It seems that the SW manager was employing a ‘light touch’ to the scrutiny of LASW4’s written evidence, based on her ‘Advanced Practitioner’ status. In pre-hearing discussions with her legal representative, and in discussions with the CG and the child’s legal representative, LASW4 presented as a very confident practitioner. (Observations Case 4 FH Day 1) LASW4’s generally confident presentation and approach may have resulted in less in-house scrutiny of her written evidence. Assumptions by the SW manager about LASW4’s ability to prepare and present final evidence for contested care proceedings, coupled with LASW4’s limited direct experience of the processes in contested care proceedings are likely to have contributed to this.

In addition to the evaluation by the SW manager, there would also have been in-house evaluation of LASW4’s evidence by the LA legal team, providing another opportunity

for identification of strengths, weaknesses and gaps, prior to filing the evidence. The limitations in LASW4's written evidence, which later became the basis of cross-examination, were not highlighted in the in-house evaluations by the LA legal team (LASW4 Interview). Additionally, the content (and potential limitations) of her written evidence were not discussed in pre-court discussions between LASW4 and her legal representative (in-house LA barrister) at the time of the contested FH (Observations Case 4 FH Day 1). It is not surprising therefore, that LASW4 did not anticipate that there might be gaps or weaknesses in her written evidence and the LA's case. In her interview, LASW4 acknowledged that she was not adequately aware of or prepared for the legal processes involved in contested hearings:

...nobody has ever sat down with me and explained the court process, what it all means. I don't know if this is right, because nobody's ever told me, my understanding is that your written evidence is presented as fact and then if people want to challenge it, the onus is on them to challenge it and to disprove it... I don't know if that's right. But [then in court] I felt like I had to prove my case... and obviously that's why I came across as hostile to mum. Because I felt so strongly that I had to do the right thing for those children, that I had to make sure that I proved my case. (LASW4 Interview)

Dickens (2008) has explored relationships between LA legal teams, SW managers and LASWs, including consideration of the support that can be provided to LASWs when navigating legal processes. LASW2 described the contribution that the LA legal department can make when preparing for a contested hearing:

[The legal department] consider the full case, from all different kind of angles if you will... hypothetically what would be mum's argument, the Guardian's

argument... So I think they think about it more fully in that sense, whereas we're kind of focused on the day-to-day stuff. So I think they consider the case in its totality, whereas I don't think as a social worker you have the capacity to do that... that's not your role. [The legal department] think about what is going to be asked. (LASW2 Interview 2)

Support from managers and LA lawyers to LASWs preparing for care proceedings, and in-house scrutiny and evaluation of written evidence, prior to filing with the court, were identified as important sources of learning about legal requirements and legal processes.

[My previous manager] would go through every single statement with a fine tooth comb and you'd get it back with hundreds of recommendations on it. But it was brilliant because you walked in the court room thinking I know this is a good statement, because she would leave no stone unturned really. That's less now because as I've become more experienced. (LASW1 Interview 1)

... some of it is from your own experience of practice, but also you're getting legal advice over time. So our legal department... they'll advise me [of] anything relevant that's going on... what the courts are going to look at from new case law... we'll get an email sent to us with the new procedures or a new outline... You get it from your supervision as well and speaking in the team room, other social workers will have had other things happening on their cases where you think, I'll remember that. So when you're pulling your evidence together then you cover that bit because that was a hole in theirs so I'll make sure it's not going to be a hole in mine... and we learn from each other. You learn from your manager, you learn from your own experiences and then you get the legal side of it from our legal department. (LASW3 Interview)

Here, LASW3 describes her learning over time about how to prepare written evidence, incorporating legal knowledge which had developed through experience, managerial supervision, peer support and input from the LA legal team. It is also clear in this quote that LASW3 recognised the benefit of and seeks out learning from others, in order to ensure her evidence is of good quality. Through these in-house, inter-disciplinary practice development and preparation processes, LASW3 was able to become familiarised with legal requirements and expectations, which LASW3 could then employ within her written evidence and in navigating the legal process in court.

LASW3 separates out her learning in this quote as including learning from both her own colleagues, and the legal department for ‘the legal side of it’. This indicates a degree of separation in the LASW’s mind between SW knowledge and legal knowledge, suggesting the need to draw on knowledge and learning from people within the separate, specialist domains, to prepare evidence for care proceedings. This highlights that engaging with both SW and legal in-house perspectives may improve LASWs’ understanding of the expectations of the legal process and the court environment prior to direct experience of contested hearings. In Collins and Evans’ terms, LASWs benefit from a preparatory process of legal ‘socialisation’, which aims to assist in promoting effective communication across professional domains by promoting Interactional Ability. In this example, LASW3 demonstrated Reflective Ability about her own learning needs, which meant she was open to developing Interactional Ability in relation to preparing good social work evidence, to be communicated to a legal audience, which is more likely to result in the realisation of Interactional Expertise within the legal process.

Knowledge of legal process and requirements, and in particular a fear of not knowing or understanding, was also linked with emotions about being a professional witness and presenting social knowledge in care proceedings:

You might feel like an expert with that family if you've worked with them for two years, because you know lots about them, you've got a good professional relationship with them. But in terms of feeling like an expert in court, around the legalities, you don't really feel like an expert in that respect because you don't always know all the ins and outs of all the legal things that are going on. I think that's my fear really in court, that they'll start asking me about processes and legalities that I wouldn't know about. (LASW1 Interview 1)

Here, LASW1 identifies a lack of confidence and a lack of expertise in what she terms 'the legalities' in court hearings. She contrasts this with a feeling of expertise in her work with and knowledge of the family in the case, derived from the working relationships she formed with them. In the case of LASW1, a clear distinction is made between experience of and confidence in SW practice with families, and experience of and confidence in her ability to understand and navigate the legal process, particularly in contested hearings. This highlights that effective communication within a legal process requires additional, different knowledge and experience than is acquired by working with families. Collins and Evans' (2007) theory suggests this is achieved by socialisation in the legal processes and requirements, coupled with Reflective Ability to recognise and develop LASWs' Interactional Abilities, in order to demonstrate Interactional Expertise in care proceedings.

### **7.2.3 Communication and presentation (written evidence): ‘Knowing the family’ – demonstrating a balanced and compassionate approach with families**

The LASWs were clear that balance and compassion should ‘underpin’ their assessments and recommendations, and acknowledged the need for challenge to LA decision making, within care proceedings:

I came into social work to help people make changes so they can look after their own children. (LASW3 Interview)

... it’s right for the parent to contest the plan, it’s right for the parents to have their say, it’s right for this to be thoroughly thought through and considered. It’s part of what we do. (LASW2 Interview 2)

The LASWs also described their emotions about the processes and potential outcomes of legal proceedings for themselves, and for the children and family members. These emotions included sadness for the parents as well as anxiety about the LASWs’ own ability to ‘perform’ well, particularly in oral evidence, to achieve what they viewed as the appropriate outcome for the child.

I’ve got so much empathy for B, I’d come out of those [assessment] sessions holding the tears back because I knew I had to [recommend] she wasn’t going to get her baby back. But it was her own life experiences that is made her what she is today, and it’s sad, but it was never going to be any other option... [the child] was never going to be going home to her. But some, where it’s more fine balanced, if we had longer to work with the families, there might be different outcomes. And those days are gone now because of these timescales, and I think it’s very sad. Because that’s not what I came into social work to do. (LASW3 Interview)

The social worker is the person who knows those children best, and is the only person who has that emotional connection with them. The Guardian doesn't, they see them what two or three times. The solicitors don't know them at all. [Giving evidence] you feel that sense of responsibility. And I don't think that's considered. (LASW4 Interview)

The LASWs expressed feelings of care and compassion towards family members, including in circumstances where parents might have been 'resistant' to the SW process, and when considering the impact on parents of being present in court during contested FHs.

... you work with some people differently to how you work with others. I feel with [mother] I've been quite caring towards her... But that's because it's needed... to get her to work with me almost, because she was very resistant from the outset. (LASW2 Interview 1)

In this case, I'd not seen any positives, I'd really not. And I don't mean that as such a criticism of mum, because I know she is a product of own upbringing... I felt sorry for her, the whole three days [of the final hearing] – I can't believe nobody came to support her. I thought that was disgusting. (LASW4 Interview)

The quote from LASW2 above highlights that a balanced and compassionate approach can support a relationship-based approach to practice, including within child protection SW and care proceedings. LASW2 presented as confident and balanced, with a detailed knowledge of each child's needs and the potential positive and negative impacts on them, of each of the possible placement options (Observations Case 2 FH Day 1). LASW2's knowledge and analysis of the children's and the mother's needs, derived from her working relationship with each of them, which formed the basis of her

answers to questions from both the mother's barrister and the judge. However, LASW2 described the FH in Case2 as the most 'emotive' she had ever been involved in (even though she had been involved in other cases where the recommendation was to separate siblings) (LASW2 Interview 2). LASW2 related these emotions to her feelings of care towards the mother, based on her working relationship with her, and the 'enormity' of the decision to recommend that the siblings be separated.

LASW2 was clear that on balance this was the right recommendation for both children, based on her analysis of the issues, the needs of the children and the mother and the research evidence base she cited. Nonetheless, a strong element in the courtroom observations and second interview with the LASW was the 'emotional labour' (Hochschild 1983) involved in managing a compassionate approach and feelings of caring towards the mother and children whilst at the same time recommending painful separations for all. This was also reflected in the LASW's written and oral evidence by her use of terms such as 'with regret' in relation to the recommendation in her written evidence (LASW2 final written evidence - Final SWET), and by her concession in oral evidence (during cross-examination by the mother's barrister) that some harm would be caused to the children by separating them, even if in her opinion it was the option that carried the least risk to their welfare (Observations Case 2 FH Day 1). After the judgement hearing LASW2 described that this was the first time in her experience of care proceedings that she had been 'close to tears' (LASW2 Interview 2), indicating the extent of the emotional labour required to maintain her composure, whilst witnessing the judgement that she had argued for being delivered in the presence of the mother. Links between evaluations of expertise, relationship-based approaches, caring and emotional labour are discussed further at p.301.



#### **7.2.4 Communication and presentation (written evidence): ‘Knowing the family’ - presenting as a credible and reliable witness**

The expert witness is somebody who has a fountain of knowledge on that family and who knows what the risks are... in this case for example I would see myself as an expert in this family, within this case. Because I know the family, I know the risks... If that [child] was to go home, I can foresee what will happen. You know, I’ve been around the family. (LASW1 Interview 1)

When considering the impression they might make as professional witnesses, the LASWs were clear that their knowledge of the family and knowledge of the case would be important factors in creating a positive impression with the court and demonstrating expertise.

... you’ve got to know your case well and you’ve got to be firm on your opinion. I strongly believed in my view and I think being confident in yourself that, I am qualified, I have got many years of experience behind me. No, I might not be what has traditionally been seen as an expert but I feel I am an expert, I do know my stuff. (LASW3 Interview)

...being able to evidence that you know that case through and through, and it’s something I particularly pride myself on really, I do know the families and do know the children that I work with. And if there’s anything I don’t know I go out of my way to find that information out. I’m quite neurotic about that. So the thought that I might be asked something that I don’t know, and undermines my evidence, and undermines my knowledge of the family, is nerve wracking. But thankfully that didn’t happen this time (LASW1 Interview 2)

In the quote above, LASW1 described the importance to her professional work of knowing the family well and knowing the case thoroughly. She linked this with feeling nervous that she could be asked a question in court that she did not know the answer to, and she sought to avoid this happening by maintaining a proactive, professionally curious approach in her practice. A possible lack of knowledge of the family and the case worried her, in that it might have undermined her ability to ‘perform’ well in her oral evidence, thus affecting the presentation of her professional ‘self’ and how she would be perceived as a professional witness within the legal process. As will be discussed later in relation to judicial evaluations (Chapter 9), LASW1 was commended in the judgment for her conscientious and thorough approach to her work with the family members and particularly the father. The amount of time she had spent with the father in her assessments was highlighted positively, in relation to her credibility and reliability as a professional witness. Goffman (1959) would term this, ‘backstage’ work, ensuring that LASW1 had all the required knowledge about the family, to underpin her ‘frontstage’ performance in written and oral evidence (LASW1 final written evidence, Child and Family assessment of father).

Of course, the father in Case 1 was not a voluntary participant in this process. He wanted to assume care of his child and the only way to attempt or achieve this was to take part in the SW assessment process. In the context of LASWs ‘knowing the family’ and ‘knowing the case’, the involuntary nature of working with parents in care proceedings brings into question the type of relationship that can be achieved between the LASW and family members in these circumstances. The question as to whether a relationship based approach is possible in child protection cases has been explored by Turney (2012) who identified three possible elements of a relationship based approach to SW practice with involuntary service users: recognition, respect and reciprocity. In

Case 1, LASW1's written and oral evidence suggested that she had been able to include recognition of the father's strengths – for example his love for his child and his genuine commitment to building a positive relationship through contact. Her descriptions of the father's vulnerabilities and limitations were respectfully phrased and evidence-based (she provided examples from the assessment and other sources to support her analysis). Additionally it appeared from LASW1's written and oral evidence that she had begun the assessment with an open mind to the possibility of the father being a suitable carer for the child. Her approach over the seven assessment sessions had been to spend time listening and exploring issues with the father, suggesting at least a degree of reciprocity in the assessment process (LASW1 written evidence and observations). This indicates that LASW1 had sought to achieve a relationship-based 'knowing' of the father to inform her assessment and recommendation to the court about the appropriate outcome for the child.

Arguably this approach demonstrates a level of expertise in LASW practice with families – to be able to form effective relationships with family members, in the context of adversarial legal proceedings. LASW1 appeared to recognise that she may be an expert in the relation to the family, however as this was the first occasion that LASW1 had been required to give oral evidence, she identified that confidence and expertise in her practice with families might not translate into confidence and expertise in giving evidence in a contested hearing:

I would see myself as an expert in this family, within this case. Because I know the family, I know the risks... But I suppose there's a big difference between having the expertise that we have and then feeling like an expert in court... I think that's a big difference. (LASW1 Interview 1)

In contrast, LASW4 did not present as balanced in her approach when answering questions about the mother in her evidence in chief and in cross-examination. The cross-examination of LASW4 by mother's barrister focussed heavily on the fact that she had not included any 'protective factors' in her written evidence, and LASW4 was unable or unwilling to concede or acknowledge any 'positives' in relation to the mother in her oral evidence. LASW4 was cross-examined about why she had not explored certain things with the mother and she explained that the mother found it very difficult to stay focussed on certain issues during assessment sessions, due to her distress about her situation. After the hearing, LASW4 reflected on this in the context of her relationship with the mother.

...I did assessment sessions with mum, I took into account the fact that she had a health condition, so I did the assessment sessions in the home so she didn't have to travel. There were a couple of assessment sessions that she missed and I put in further sessions to ensure we could get as much information as we could. I did have a structure to the assessment sessions, but... she veered wildly from that structure, because she was so distressed about certain things. And I know that was raised in court, that I allowed that to happen, but she was so distressed... but I think it's wholly inappropriate to just say to her – no, no, I'm here for an assessment and you need to stop this, I'm not interested in what you're saying... But I felt that I got the information that I needed in terms of my assessment of her. (LASW4 Interview)

It appears that LASW4 approached her work with the mother with an understanding of her vulnerabilities and needs within assessment sessions, and she allowed flexibility in the assessment to ensure that the mother was able to participate in the process. However LASW4's flexibility in working with the mother, and her apparent patience during what

were reported to be difficult assessment sessions, became overshadowed in evidence by the criticism that LASW4 was unable to identify any ‘positives’ in relation to the mother.

Applying Turney’s (2012) discussion of relationship-based approaches with involuntary service users, LASW4 used recognition of and respect for the mother’s understandable distress to shape her approach to the assessment process, which was to be flexible with the mother during assessment sessions. It is unclear whether and to what extent LASW4 promoted a sense of reciprocity within the assessment process. Her final phrase in the quote above: ‘I felt that I got the information that I needed in terms of *my assessment of her*’ may indicate that LASW4 used the assessment process to gather information *from* the mother, rather than to explore issues *with* the mother. LASW4’s flexibility in the context of the mother’s distress was perhaps motivated by her desire to ‘get the assessment done’, rather than indicative of a more relationship-based approach to working with the mother. In other words, LASW4’s approach in the assessment process was that the professional relationship with the mother was a ‘means to an end’, rather than an end in itself, the latter being a basis of relationship-based practice, including with involuntary service users (Turney 2012). Additionally, the phrase in the quote ‘I got the information I needed’, may suggest that LASW4 was seeking information to confirm her view of the mother, which she had formed based on what the children had told her (and the carers) about the mother’s behaviour towards them. If so, then it seems unlikely that LASW4 engendered a sense of reciprocity during the assessment and this may have contributed to an overall impression, as suggested in cross-examination, that LASW4 had been in some way ‘biased’ against the mother. This is discussed further in Chapter 10.

Within her interview a few days after the FH, LASW4 reflected on the emotional impact on her of the FH and the enormity of the decision-making within care proceedings, including the potential for significant losses for parents and children:

...both days I drove home in tears because I was really upset. Not even particularly about the giving evidence... just the emotion of the whole situation. But... that's how it should be really because it's such a massive thing... what the parents are losing, it's huge. So a couple of days of upset for me is nothing compared to what the parents are losing and compared to what the children are losing, because as much as it's the right thing they are still losing their family aren't they? (LASW4 Interview)

LASW4 also reflected on the emotional impact of the children's allegations about their mother (made directly to LASW4 and the foster carer), which appeared to reinforce that her approach in practice was to retain a focus on the children, not the mother:

... as much as you are professional and supposed to be objective, you can't help but have a level of emotional involvement... if you've removed children in really horrific circumstances you do have that... you're the one that they have disclosed all sorts of horrible things to... (LA barrister) said that I was too critical of mum...the phrase that she used (was) 'grudging'... I don't think that's the right word, because to me it wasn't about mum, it was about the children. (LASW4 Interview)

These examples demonstrate some empathy for children and parents in care proceedings, but also highlight that there may be significant emotional labour (Hochschild, 2003) involved in constructing and presenting LASW evidence within

care proceedings, to ensure emotional containment whilst also persuading the court to grant the LA's application.

In addition to emotional labour involved in managing feelings about the issues for children and parents, data also indicated that the LASWs were managing feelings of worry, nervousness and responsibility about their 'performance' as professional witnesses, particularly in oral evidence. The presentation of LASW's evidence in the courtroom is explored next, with reference to the LASWs' reflections in the interviews about their concerns to present an 'expert' professional self in the courtroom, and observations of their oral evidence.

### **7.3 LASWs' evaluations of their communication and presentation of oral evidence**

The first impression that a judge or legal professional has of a LASW in any care proceedings case is usually their written evidence, therefore the preparation and presentation of written evidence can have a direct bearing on the impression made prior to any court hearing. Written evidence may contain limited information about the LASW's qualifications and experience, which informs early evaluations and impressions of the credentials and experience of the LASW, as highlighted in data from the Phase 1 judicial focus groups (p.170). In uncontested cases, where oral evidence from LASWs is not required, the impressions formed and evaluations made of the LASW written evidence are not tested in any direct way in the courtroom, and the case may be concluded without further scrutiny or challenge of the written evidence or the SW practice underpinning it. However, in contested cases, there is inevitable direct scrutiny and challenge of (aspects of) the LASWs' written evidence, via oral evidence

and cross-examination. In this study, the LASWs expressed a desire to create a good impression when giving oral evidence in care proceedings, and some nervousness that they might not do so.

### **7.3.1 Communication and presentation (oral evidence): Preparation for giving oral evidence and learning from experience**

The LASWs had varying levels of experience of contested hearings in care proceedings. LASW1 and LASW3 had no prior experience of contested hearings and being cross-examined. LASW4 had limited experience of cross-examination, and LASW2 had given evidence and been cross-examined in contested care proceedings hearings several times before. Some of the LASWs expressed a level of anxiety (in the context of no prior experience) about the potential for their performance as a professional witness to fail, and impression management to be unsuccessful, as a consequence of being nervous.

...you want to put a good face on for the local authority... you don't want to go and be crying in the stand and stumbling over your words...you want to do your profession proud. You don't want to add to stereotypes of how social workers present in court. You want to rise above that and give us a good name, and show that you've worked hard and really defend the work that you've done with these families. (LASW1 Interview 2)

I know when I'm nervous I go blank. So I was bothered about, will that happen to me? Because I didn't know whether it would or not. Thank God it didn't. Thank God I was able to remain calm and just answer the questions as best I could. (LASW3 Interview)



In the first of the quotes above, LASW1 expressed her wish to present a positive professional ‘self’ wanting, as she says, to ‘put a good face on’. This relates to the LASWs’ ideas and beliefs about what constitutes an appropriate ‘front stage’ performance (Goffman 1959) for a professional witness, and anxiety that this may not be achieved, potentially resulting in failure to achieve the desired outcome for the children and other family members in the case. It also relates to Goffman’s analysis of impression management techniques and issues of consequence resulting from the performance and its evaluation. LASW3 expressed relief that, despite feeling very nervous, she was able to remain calm and answer questions. During her oral evidence, LASW3 presented as balanced in her assessment of the parents; she was calm and clear during cross-examination and was able to provide examples from her knowledge of the family members and issues to ‘back up’ her opinion about issues of risk (Observations Case 3 FH). As indicated above, LASW1 was also concerned to perform well and she described techniques of impression management that she considered would create a positive impression of her as a professional witness. These included a calm demeanour (not crying), ease and confidence in the courtroom environment (not stumbling over words), and balance between authoritative professional opinion and respectful responses to alternative perspectives in cross-examination (defend the work with the family). LASW1 also referred to wanting to do well for her employer and the SW profession, suggesting that, for her at least, the potential consequences of poor impression management may have a wider impact than her individual professional reputation.

LASW1 and LASW3, who had no prior experience of giving oral evidence, described ‘backstage’ preparation activities in their LA and in their own time, at home. These included re-acquainting themselves with their written evidence, as well as conversations

with experienced SW colleagues who had given oral evidence before and received positive feedback on their performance. The LASWs also described discussions with LA legal representatives in meetings and on the telephone about aspects of the case that they might anticipate as weak and/or subject to challenge.

I just went through everything again to refresh my mind on it, as well as looking at the things that I was going to get cross-examined on... reminding myself what the arguments were. I also reminded myself of the vulnerabilities and some of the positives for both mum and dad... I spoke to my solicitor, just to say right help me prepare, I've never done it before, what do I need to think about? So she gave me ideas – make sure you know what your argument is, what you want to say, and to make sure you get it in. And I also spoke to colleagues who have done it before, who I knew had been given good feedback, to have an idea of what it might be like. (LASW3 Interview)

I prepared the night before, and I rang the ASW [advanced social worker] and she's had loads of court experience, she was taking me through just the basics about what our solicitor would ask. And that sort of set me at ease a little bit because I sort of felt like I had a bit of an idea of what they might ask. (LASW1 Interview 2)

These LASWs were inexperienced, not in social work practice, but in contested care proceedings. In relation to subsequent impression management, their preparation activities were intended to optimise the LASWs' knowledge about what to expect in a contested hearing, with advice about how best to present themselves, in order to be evaluated favourably by the legal decision maker.

In contrast, LASW2 had given evidence and been cross-examined several times. She described that her focus for preparation was on the quality of her written evidence, which she believed could reduce opportunities for cross-examination, if presented well. In Case 2 the main issue in the contested FH was the LA's proposal that the 2 children should be placed separately, one in long-term foster care and one placed for adoption. LASW2 described that she understood that this would be a key concern for the court and had prepared her written evidence in the final SWET accordingly:

... we were very much considering two separate siblings and two separate care plans, I talked about each child and looked at the harm, needs et cetera but then I referenced the welfare checklist. And so it was very clear that I'd given consideration to [the welfare checklist] for each child... I think that enabled it to flow better and also gave an overview of the sibling relationship and needs assessment that was undertaken as well within that. (LASW2 Interview 2)

Linking to Collins and Evans' (2007) theory of expertises, this indicates that LASW2 had prepared her written evidence with the court 'in mind', suggesting that she applied Reflective Ability about her practice, combined with Interactional Ability in thinking how best to present her written evidence within a legal process, thus promoting Interactional Expertise in her communication with the court.

Additional preparation for LASW2 included meetings with her LA legal representative prior to the hearing and meeting with the LA barrister on the morning of the hearing to discuss the care plans. In this 'backstage' discussion, LASW2 and the LA barrister were anticipating possible questions that might come up during the hearing, about the care plans. However, these were relatively minor issues and it was apparent that LASW2 was knowledgeable and confident in her responses about the proposed care plans.

Overall LASW2 appeared relaxed and calm in relation to the FH. The only concerns she expressed were about the mother's well-being (the mother was attending the FH alone). This demonstrated LASW2's empathetic and compassionate approach to the mother, whilst maintaining an appropriate balance and focus on the LA recommendation that the children needed permanent placements outside of their family (Observations Case 2 FH Day 1). LASW2's approach to the case demonstrated a combination of Interactional Expertise in the communication of social work knowledge and practice within the written evidence (Collins and Evans, 2007), with effective 'backstage' preparation for a frontstage performance in oral evidence and cross-examination during the contested FH (Goffman 1959). Arguably, this resulted in LASW2 achieving the presentation of an 'expert professional self' to the court, which was recognised by the judge and the other legal professionals.

LASW4 also engaged in preparation activities prior to the contested FH. This preparation focussed on her written evidence including her initial and final SWETs and her assessment documents. In addition she reviewed contact logs and her own assessment notebooks, to draw out 'quotes' from the children as this was what she wanted to present to the court in her oral evidence.

I read through key pieces of information, my initial statement, my final statement, my assessment. I read back through some of the contact logs, I prepared a lot, I went back through visits with the children and I got lots of information. I wrote myself lots and lots of notes about the comments the children had made, because, to me, being able to say it directly that the children had said this, is much better than me just saying – it's emotional harm. (LASW4 Interview)

However, it appears that LASW4's preparation did not include much, if any, 'backstage' discussions with her SW colleagues or manager, or her LA legal representative, prior to the FH. This probably impacted on LASW4's performance in her oral evidence, as it appeared she lacked understanding as to the focus of the FH, assuming that the court would want her to focus on evidencing the harm caused to the children, by reference to their allegations made to her and the carers. In fact, the focus of the contested hearing was not the allegations that the children had made, as these were not disputed, but the level of support that had been provided to the mother prior to and during the assessment processes and the detail of the individual care plans for the children (Observations Case 4 FH Day 1).

On day 1 of the FH, there were limited 'backstage' conversations between LASW4 and her legal representative (in-house LA barrister) in a corridor of the court building. In these discussions the LA barrister was suggesting to LASW4 that the case might 'settle' and she might not be required to give oral evidence; this was in the context of the barrister telling LASW4 that the LA case was 'strong' (Observations Case 4 FH Day 1). There were two other LA witnesses (support workers) scheduled to give (short) evidence ahead of LASW4 and the LA barrister spent some time with them giving advice about oral evidence and cross-examination. There was some limited discussion between the LA barrister and LASW4 about LASW4's assessment of the mother. However, this was brief and LASW4 did not ask her legal representative for any advice about the quality of her written evidence, giving oral evidence or being cross-examined.

LASW4 presented in the pre-hearing discussions as a confident, authoritative professional and it is possible that this was a 'performance' intended by LASW4 to manage impressions of herself as an expert, professional witness, to those around her (Goffman 1959). The lack of privacy and potential for other parties' representatives to

witness these discussions may have contributed to LASW4 treating these exchanges as more of a ‘frontstage’ setting, resulting in her not wanting to ask what might appear to be basic questions of her legal representative, or declare inexperience in contested FHs. It is also possible that my presence as a researcher impacted on what would otherwise have been an in-house ‘backstage’ encounter between LASW4 and the LA legal representative, resulting in LASW4 feeling that she needed to manage the impression she was giving or creating (Observations Case 4 FH Day 1). Overall, LASW4’s preparation for and understanding of the processes within a contested FH appeared to be limited, which may have undermined her ability to perform well as a professional witness during cross-examination.

In her interview after the hearing, LASW4 reflected on her lack of training and assumptions made about her level of experience in contested hearings.

I was supposed to have (court skills training) but it got cancelled because of OFSTED... people just assumed... (in-house LA barrister) assumed that I was really experienced at giving evidence... (LASW4 Interview)

### **7.3.2 Communication and presentation (oral evidence): Performance – Creating a good impression, the court environment, demeanour and nerves**

The issues of performance and impression management were also discussed by the LASWs in relation to navigating the legal processes in contested hearings and managing their emotions, particularly ‘nerves’. The particular formality of the court environment, specifically with respect to language and dress, was described by LASW1 and LASW3 as contributing to their nervousness and lack of confidence as professional witnesses. This formality was compared with the more informal settings in which social

workers would usually engage with children and families, as well as the efforts the LASWs would make to ensure that the language they used with families was accessible to them.

I think it's important as an expert witness to be able to present the case... to be in line with the other professionals there... and to be taken seriously as well. If we talked in court like we talked to the families, we probably wouldn't be taken very seriously... That makes me feel sometimes that [the families] are a bit excluded what goes on in court. I don't think families always understand what's being talked about. (LASW1 Interview 1)

Here, LASW1 felt she had to communicate more formally in the court environment in order to be 'taken seriously', even though this may affect families' experiences of the legal process and result in them feeling marginalised. However, the ability to adopt a more formal type of communication in the court environment is dependent on the LASW having an understanding of the environment and the expectations. In other words, they need to be sufficiently socialised in the legal process and courtroom interactions in order to communicate effectively within them (Collins and Evans, 2007).

Before she had experienced the contested FH, LASW1 described the prospect of being a professional witness as 'nerve wracking' and the courtroom as 'an alien environment' (LASW1 Interview 1). For LASW1 this was linked with her lack of experience and a lack of confidence when compared with other professionals who may be more familiar with the setting and environment:

It's just your own insecurities because you're not used to it... And because everyone else seems so confident around you, and comfortable, and you're sat there shaking in your boots, just dreading it. (LASW1 Interview 1)

LASW3 felt that she needed to remind herself to feel confident in her knowledge and skills:

...to try and keep yourself feeling confident, I would say tell yourself – you know your case really well, and you're confident in speaking in public in other forums, it's no different just because it's court, they're only people... just because they've got a posh job and posh accents, they're only people! (LASW3 Interview)

The reference to legal professionals being 'posh' also suggests that LASW3 felt different (in class terms) to the other professionals in the process and that it was important to remind herself of her 'worth' as a professional witness. This idea of difference, resulting in a sense of being disadvantaged within the legal process, led to the LASWs adopting techniques of impression management (Goffman 1959), to try to ensure that they were regarded as professional and/or expert witnesses. For example, as well as formality of language, LASW1 described how a lack of time (due to work commitments) to prepare her 'appropriate' clothing for court left her feeling at a disadvantage in terms of the impression she would or could give in court:

... the dress issue is a big one for me with court... we have our set wardrobe that we wear all week and we're hardly ever in court, and I got up this morning and I couldn't find my suit. I probably should have been more organised, but I was working till 11pm last night. So straight off the bat you feel at a disadvantage, you know when you haven't got a suit on. (LASW1 Interview 1)

Neither LASW1 nor LASW3 had experienced the particular processes and dynamics relating to oral evidence and cross-examination in a contested hearing. Nonetheless, during the FHs, both presented as calm (they did not appear to be nervous) and they



answered questions clearly, demonstrating a good knowledge of the family members and the case (Observations Case 1 FH Day 2 and Case 3 FH Day 1).

LASW3 expressed that her knowledge of the case and her 'argument' (the analysis underpinning her recommendation) reduced her feeling of nervousness during her evidence. LASW3 attributed this to her preparation before the hearing, in her own time, which included a full review of all her evidence as well as consulting with experienced colleagues:

...it was tough, I thought I would be very nervous, and I wasn't. And I think that is because I knew my case and I knew my argument, So it didn't matter what they asked me, I would know how to answer it... once I got there and stood on the stand, I did know, I could answer anything that was asked of me... thankfully my nerves didn't get the better of me... I wouldn't have done as good if I hadn't put in that eight hours in my own time, to freshen my mind... And thankfully I was able to keep myself composed. (LASW3 Interview)

LASW3 also described her experience of managing her nerves to promote a positive presentation of herself during cross-examination:

...even though I was tired I didn't lose my concentration. It was only the last couple of questions... I could hear my voice going nervous. I feel I answered the question right, but I could hear my voice stuttering slightly, but thankfully I managed to get myself back enough to give a proper answer... And I think that is because I knew my case and I knew my argument, so it didn't matter what they asked me, (LASW3 Interview)

In this study, LASW4 struggled to create a positive impression of a professional witness during the contested hearing.

It appears that LASW4 began on day 1 of the FH as a confident professional witness. As an ‘Advanced Practitioner’, she expected to be able to present an ‘expert’ professional self, and to be accepted as an expert by the court. This was despite limited experience in the courtroom environment and, as it transpired, a lack of knowledge and understanding of the legal processes involved in contested hearings.

Within observations of LASW4 in pre-hearing discussions at court on day 1 of the contested hearing, she presented as a confident and authoritative professional, in relation to her knowledge of the LA’s case and her recommendations about the plans for the children. However, it seemed LASW4 was not as clear about how the contested hearing might progress; specifically she fully expected to give her evidence on day 1 of the hearing, despite the fact that there were 2 other (LA) witnesses who were scheduled to give evidence before her. By the end of day 1 of the hearing it was clear that LASW4 would not be giving her evidence that day and she appeared visibly unhappy. This appeared to unsettle LASW4 to the extent that on the morning of day 2 of the hearing, prior to her giving evidence, she appeared very nervous (in contrast to the previous day) and spent much of the waiting time alone, going through all of her notes again in a consultation room. (Observations Case 4 FH Day 1 and Day 2) In her interview, LASW4 reflected on this:

I was really unhappy that I didn’t get to give evidence... having prepared the day before and that morning, and sort of emotionally I was ready, so I found it really, really difficult that I didn’t get to give evidence that day... [On day 2] I felt like it had thrown me off, you know because I was so focused on the first day, and didn’t get to give my evidence. I felt like I need to revisit it all because I can’t remember it now... (LASW4 Interview)

It appears that LASW4's efforts to manage impressions of herself as a professional witness were affected by the unexpected (to her) delay in her oral evidence and a lack of understanding about the legal process, resulting in an emotional response that potentially impacted on her presentation of her professional self. Observations on day 2 of the hearing suggested that LASW4 was anxious, possibly reflecting a growing realisation about her lack of experience of contested hearings. This may have undermined her confidence in herself as a professional witness, resulting in a developing nervousness about her imminent 'front stage' performance (her oral evidence). (Observations Case 4 FH Day 2) Applying Goffman's (1959) ideas about impression management, this can be explained as an unexpected disruption to LASW4's confidence about her intended performance and the extent to which she anticipated being able to present an expert professional self.

LASW4 also held a mistaken view that within the legal process her written evidence would be accepted by the court in the first instance, rather than understanding the legal requirement for the LA to 'prove' its case (as set out in *Re A*). During her oral evidence, LASW4 was cross-examined on what was perceived as an entirely negative view of the mother's parenting capacity within her written evidence. When asked by the mother's barrister to identify positives, LASW4 was unable or unwilling to do so. LASW4 became defensive in her answers, and she later explained that she had not anticipated that her evidence would be challenged, and so she felt, unexpectedly, anxious to prove her case 'against' the mother, in order to safeguard the children (Observations Case 4 FH Day 2). LASW4 described this in her interview:

... that's why I came across as hostile to mum, because I felt so strongly that I had to do the right thing for those children, that I had to make sure that I proved my case... when I'm in the middle of it and I feel like I'm not getting my case

across as fully as I want to, I do worry, what if those children get sent home?

(LASW4 Interview)

LASW4's sense of professional responsibility to achieve her preferred outcome for the children led to anxiety, which drove her to make as strong a case as possible during her oral evidence. This affected the balance of her evidence and resulted in her being viewed by others as hostile towards the mother in the case. It may also be that LASW4 was hostile in her attitude towards the mother and she may have lacked balance during her assessment of the mother's parenting capacity. Nonetheless, the outcome of the case was that the orders applied for by the LA were granted by the court, indicating that (in this case at least) an apparently poor 'performance' by the LASW did not result in the court refusing to grant the LA's application. This will be discussed further in the next chapter, in relation to legal evaluations of LASW evidence, and in Chapter 10.

In Collins and Evans' terms, LASW4's problematic response to cross-examination reflected a lack of socialisation within the processes of contested care proceedings. LASW4 subsequently acknowledged that this affected her presentation as a professional witness, as she was ill-prepared and unable to deal appropriately with challenges to her evidence. In her interview after the FH, LASW4 demonstrated that she had reflected on her lack of awareness and knowledge of legal requirements, and learnt from her experience:

I learnt, you know the bit about where they're asking you about what support you could put in? I didn't understand what they were asking me, because if I've made a recommendation, why would I put support in place? I didn't understand that. When the judge clarified it that was fine, I just felt the way it was asked I didn't understand what they were asking of me. So I know that's something now

to include in my written evidence... I'm writing final evidence at the moment so now I'm considering those things. (LASW4 Interview)

The impressions and evaluations formed by the legal professionals and the judges of the LASWs' presentation in oral evidence in the sample cases is considered in the next chapter.

## **CHAPTER 8: LEGAL EVALUATIONS OF LOCAL AUTHORITY SOCIAL WORKERS' FINAL WRITTEN AND ORAL EVIDENCE IN THE SAMPLE CASES**

### **8.1 Introduction**

In this chapter, the focus is legal evaluations of the LASWs' written and oral evidence in the sample cases, drawing on data from observations of the contested FHs and interviews with the lawyers in each case. Observations of the contested FHs focussed on the interactions between the lawyers and the LASWs in pre-hearing discussions, and during the LASWs' evidence-in-chief and cross-examination. For example, observations of lawyers pursuing or desisting from a particular line of cross-examination were noted as potential indicators of lawyers' assessments of weak and strong aspects of the LASWs' written and oral evidence. Similarly, submissions by the lawyers to the judges in the contested FHs were noted, as additional data in relation to legal evaluations of the strengths, weaknesses and gaps in the LASWs' written and oral evidence. These data were triangulated with analysis of interview data focussed on the lawyers' comments, in particular how they assessed and evaluated the LASW written and oral evidence in each case, as well as the content and features of the evidence that influence their evaluations. This included legal evaluations of the preparation and presentation of the written evidence and the LASWs' presentation and performance as a professional witness during the contested FH. Across the cases, nine lawyers agreed to be interviewed, as outlined in Appendix T (p.378).

The main themes of communication and presentation of written and oral evidence were reflected across the interviews with lawyers and the observations of the contested FHs, with sub-themes identified in relation to legal evaluations of the LASWs' evidence, as set out below in Table 8. The analysis highlights preliminary links between these data, Collins and Evans' (2007) theory of expertises and Goffman's (1959) dramaturgical theory of performance, in particular relating to LASWs' presentation of an 'expert professional self' in contested care proceedings. This analysis will be developed further in Chapter 10.

**Table 8. Legal evaluations of LASWs' evidence: themes and sub themes**

THEMES	SUB THEMES
<b>Communication and presentation (written evidence)</b>	Social work knowledge <ul style="list-style-type: none"> <li>• Use of theory and research</li> <li>• Use of assessment tools</li> </ul> Legal knowledge <ul style="list-style-type: none"> <li>• The SWET and awareness of <i>Re B-S</i> requirements</li> <li>• Having the court 'in mind'</li> </ul> 'Knowing the family' <ul style="list-style-type: none"> <li>• Evidence of time spent with family members</li> <li>• A balanced, fair and compassionate approach with families</li> <li>• Witness credibility and evidential reliability</li> </ul>
<b>Communication and presentation (oral evidence)</b>	Preparation <ul style="list-style-type: none"> <li>• 'Having the court in mind'</li> </ul> Performance <ul style="list-style-type: none"> <li>• Forensic clarity and balance</li> <li>• Demeanour</li> </ul>

Before focusing on specific aspects of the legal evaluations of the LASW evidence, data relating to the overall process for evaluating LASW evidence is discussed, to provide a context for the following sections.

## **8.2 The process of legal evaluation of LASWs' evidence in the contested final hearings**

In the sample cases, most of the solicitors for the parties engaged barristers to conduct the advocacy for the contested FHs. The exceptions to this were the solicitor for one of the fathers in Case 4 (who was not actively contesting the case), the solicitor for the children in Case 4, and the solicitor for the mother in Case 1 (who was acting on behalf of the Official Solicitor, and not actively contesting the case).

In each of the cases, the LASW was represented by a barrister in the contested FH. In Case 4, this was an in-house advocate (a barrister employed by the LA); in the other cases the barristers were from chambers (that is, private practice). The use of barristers by solicitors representing the parties in care proceedings to conduct the advocacy in contested hearings is common practice (Pearce et al 2011; Welbourne et al 2017). The role of barristers in bringing a new legal evaluation at a late stage in the social work and legal processes was commented on in one of the interviews:

[normally] we don't get instructed until final hearing... local authorities and parents' solicitors will keep them in-house as long as possible and only brief them when they need counsel to do the contested stuff... I suppose in many ways I have an advantage because I'm in with a fresh pair of eyes, and hindsight is a wonderful thing isn't it? (LA Barrister Case 2)



This barrister then highlighted the possible benefits for the LA in cases (a minority) where there is continuity in the legal evaluation of evidence:

On some cases where I represent the local authority from beginning to end, I can have more of a handle on what's going on. [Local authority] are very good at instructing you throughout, we will speak to the social workers and have conferences... or I'll say to them at CMH stage, you need to consider this... you need to think about that. But often I don't get the luxury of doing that. (LA Barrister, Case 2)

Whilst the LA solicitor will be engaged in ongoing legal evaluations of the LASW evidence as it is constructed throughout the legal process, if the case becomes contested and a barrister is instructed, there is the potential for the LASW to be faced with a new and possibly different legal evaluation. This may be a positive or negative experience, however this means that where a FH is contested LASWs may need to manage a different (unexpected) approach from a 'new' LA barrister, when preparing to give oral evidence about their practice and the LA decision making.

### **8.2.1 Pre-hearing discussions between the LASWs and the LA barristers**

There were no formal 'advocates meetings' prior to the contested FHs within the study. However, in each case there were pre-court discussions between the LASW and the LA barrister, conducted either in private conference rooms at court (Cases 1 and 3) or in corridors in the court building (Cases 2 and 4). There were also professional discussions involving the legal representatives for the parties, the LASW and the Children's Guardian, which took place either in private conference rooms, or in more public waiting areas (Observations of pre-hearing discussions, Cases 1, 2, 3 and 4 FH). These

meetings are discussed further in Chapter 10, in relation to LASWs' 'backstage' preparation and 'frontstage' performances, prior to the court hearing itself (Goffman 1959).

The LASWs each met their barrister for the first time on the morning of the contested FH. In Cases 1, 2 and 3, the LA barristers asked the LASWs specific questions about their final written evidence, including points of clarification (eg about the detail of contact arrangements) and the reasoning behind the proposed care plans. The LA barristers made reference to the LASW giving oral evidence and being cross-examined, and in Cases 1 and 3 explicit advice was provided to the LASWs about courtroom techniques such as directing their answers to the judge and remaining calm and composed (Observations of pre-hearing discussions, Cases 1, 2 and 3 FH). In Case 4 these pre-hearing discussions focussed on one aspect of LASW4's written evidence about the assessment of the mother. The LA barrister advised that the mother's representative could suggest that the mother's apparent difficulties with the assessment process could and should have been managed and accommodated more effectively by LASW4, suggesting that this was a concern in their own evaluation of LASW4's final written evidence. However, there were no discussions with LASW4 about giving oral evidence and techniques for cross-examination. (Observations of pre-hearing discussions, Case 4 FH Day 1).

### **8.2.2 Pre-hearing discussions involving the parents' and children's legal representatives**

In addition to the pre-hearing discussions between the LASWs and the LA barristers, there were pre-hearing discussions in Cases 1, 2 and 3 involving the parents' and children's legal representatives, the LA barrister, the LASW and the Children's

Guardian. No observations of these discussions were conducted in Case 1 due to a clash in listing. In Case 4, the parents' legal representatives did not attend the pre-hearing discussion.

These pre-hearing discussions were not simply discussions between the lawyers. The LASWs and Children's Guardians were active participants and the observations highlighted a particular focus on the LASW in these meetings, with direct questions to the LASWs by the parties' legal representatives and by the Children's Guardian. Whilst the discussions were generally informal in structure, and questions were not asked in the style of cross-examination, it appeared that the parties' legal representatives were 'checking' certain aspects of the LASW's evidence and/or indicating particular aspects that they might subsequently challenge. This appeared to include explorations by lawyers and the Children's Guardian of the issues relevant to their clients' case/s, with questions focussed on the LASWs, who appeared to be 'in the spotlight' within the meetings. (Observations of pre-hearing discussions, Cases 2, 3 and 4 FH). For example, in Case 2 the barrister for the children asked LASW2 several questions for clarification about the children's proposed placements and contact arrangements (Observations of pre-hearing discussions, Case 2 FH). In Case 3 the barrister for the father asked LASW3 specific questions about her observations of the father's contact, and the parenting support offered, in relation to the LASWs' conclusion that the child should not be placed with the father. The same barrister also indicated that she was concerned that the LASW's assessment had concluded several months prior to the FH and there was no update (Observations of pre-hearing discussions, Case 3 FH). In Case 4 the Children's Guardian engaged the LASW in a detailed discussion about the proposed contact plans, resulting in the LASW and the LA barrister agreeing to amend the plans to be put before the court (Observations of pre-hearing discussions, Case 4 FH). It was

perhaps significant that in Case 4, the parents' legal representatives were not involved in pre-hearing discussions, and so the LASW had no prior indication of their possible areas of cross-examination.

These observations indicated that legal evaluations of LASW evidence began with reviewing the LASW's written evidence, but then continued through a process of checking and 'testing' areas of the evidence from each advocate's perspective, in conversations and meetings prior to the hearings. This was confirmed in the lawyers' interviews and is discussed later in relation to LASWs' performance as a professional witness, in various 'backstage' and 'frontstage' settings (Goffman 1959), outside of the courtroom (p.281).

### **8.3 Legal evaluations of LASWs' written evidence within the sample cases**

#### **8.3.1 Communication and presentation: Social work knowledge - use of theory and research**

The lawyers identified that inclusion of social work theory and research in LASW written evidence could be both potentially useful and sometimes problematic, depending on how social work knowledge was presented and applied:

Sometimes... you'll see a really good SWET which refers, where a particular point may be controversial, to research to support the point that they're making. I do think that helps the local authority in establishing the case, if it's done well. If it's just a sort of a scattergun approach, then it doesn't look compelling, but I think if it's done properly it is quite impressive. (Barrister for the mother, Case 2)

... sometimes it does look like a copy and paste job... they've got the standard wording from whatever research says... I think you can tell whether they've applied it to that particular scenario or whether they've just stuck it in because they know some research needs to go in. If they've applied it, I think that shows a good quality social worker who really understands what that research means.

(Solicitor for the children, Case 4)

The lawyers also made specific reference to their evaluations of the LASWs' use of SW knowledge. In the example that follows, LASW2 had explicitly applied and included references to aspects of attachment theory and SW research about outcomes for children in different types of permanent placements. There was a clear focus in LASW2's final written evidence on the knowledge base she had applied in reaching a reasoned recommendation for the separation of two siblings, which was the main issue in the contested FH (LASW2 Final written evidence):

[LASW2's written evidence] was sound in the way that she explained the local authority's care planning...the reasoning was explained for the decision-making, and it was properly evidence-based, both in relation to in my client's case not returning the children to her, and the reasoning for the decision to split the children (Barrister for mother, Case 2)

The lawyer in Case 1 highlighted that effective use of research and theory by LASWs in their written evidence could be useful, in the context of fewer independent experts being instructed within proceedings:

... you get [use of research] sometimes in respect of attachment which can be helpful, especially now that we have much less use of psychologists in terms of sibling attachment and parental attachment... if social workers are very familiar

with the attachment literature, I think it can be helpful... it's useful when it's relevant and when they're making a specific point. (LA Barrister, Case 1)

In the quotes above the lawyers showed that they were able to recognise and evaluate the knowledge base applied in the LASWs' written evidence, and to evaluate the quality of the reasoning presented in the written evidence. Applying Collins and Evans' (2007), this illustrates the application of 'Technical Connoisseurship' by the lawyers in order to understand and evaluate the social work knowledge base underpinning the recommendation.

Observations of the contested FH also provided data about legal evaluations of the use of SW knowledge in LASWs' oral evidence. For example, LASW3 was cross-examined about her assertion (in her written evidence) that there was a reported history of domestic abuse by the father in a previous relationship, despite the absence of any Police reports. In response LASW3 explained that it is 'known' that many incidents of domestic abuse are not reported to the Police, although she did not cite a particular source for this knowledge claim. In her interview, LASW3 confirmed that she had been referring in her oral evidence to research about a general under-reporting of domestic abuse. In this way, LASW3 drew on her professional knowledge base (albeit without identifying the source of her knowledge) to explain to the court her analysis of reported concerns about the father (Observations Case 3, FH Day 1). Following this explanation, the barrister for the father did not pursue the line of cross-examination and the judge asked no questions, suggesting that LASW3's response was accepted. All the lawyers in the case were experienced practitioners and it is likely that they were familiar with well-known, generally accepted research findings about under-reporting of domestic abuse (see, for example, ONS, 2017). In other words, the lawyers were aware of and understood the underpinning (SW) knowledge base that the LASW was referring to in

her response to cross-examination, and LASW3's knowledge claim was accepted as being within her professional expertise.

### **8.3.2 Communication and presentation: Social work knowledge - use of risk assessment tools**

Linked with the use of SW theory and research, some of the lawyers also commented on their evaluations of how specific risk assessment tools used in some LAs are presented within written evidence:

... when they are able to show what tools they've used, I think that's brilliant...

I think that helps me look at how much they've understood why they're doing it and what the tool shows. (Solicitor for the children, Case 4)

Case 1 was the only example in the study of a specific, LA risk assessment tool being used and referred to in the LASW's written and oral evidence. LASW1 was cross-examined by the barrister for the father in the case about this assessment tool, as discussed previously (p.195). In relation to the legal evaluation of this aspect of the LASW's evidence, one of the lawyers in the case commented about the potential for a negative impression being created if such tools are not used appropriately:

...it is a[n assessment] tool which may be helpful to the social worker's thinking, but it includes things which are really statistical... I think it is viewed with a little bit of suspicion in social work evidence as though it has led to formulaic thinking. So I've got mixed feelings about that actually as to whether it should be used at all, or whether it should be used and not referred to.

(Barrister for LA, Case 1)

In this quote, the lawyer is providing an evaluation of the *type* of assessment tool being used in this case. It was unclear whether this was a purely personal view or reflected a wider mistrust amongst lawyers of the use of statistics in social work assessment and decision-making in legal proceedings.

Another lawyer in the case commented on limitations in the LASW's written evidence, despite the use of a structured risk assessment tool:

... [there was] lots and lots of detail that isn't really necessary and the real risk and the implication of any risk was lost... there was no forensic clarity as to the risks. There were lots of concerns about dad, but [LASW1] didn't really extract from that morass of concern what the risks were. (Barrister for the child, Case 1)

The lawyer also distinguished in their evaluation between the quality of the LASW's written and oral evidence, suggesting that whilst the LASW did not achieve effective expression of expertise in her written evidence, she performed well in oral evidence.

[LASW1] was an excellent social worker, and I think she gave very good evidence orally, but she wasn't very good [in her written evidence] at discriminating those concerns which would justify the child being placed away from the father. (Barrister for the child, Case 1 )

Here, the lawyer is evaluating the extent to which the LASW applied analysis and reasoning, appropriate to the requirements of the legal process, when using and presenting the risk assessment tool within their written evidence. This tool may have worked well within LA social work processes, however there appeared not to have been sufficient consideration of potential challenges to its application in the specific case, within the in-house evaluations by the LASW's manager and the LA legal team.

Additionally, there appeared to be a lack of explicit analysis of specific risks, and a



consequent lack of reasoning ('forensic clarity') leading to the recommendation, particularly in relation to the father (Turney et al 2012). Following Collins and Evans (2007), the legal evaluation was that LASW1 did not achieve Interactional Expertise in her written communication of the assessed risks in this case, perhaps due to a lack of knowledge or a lack of attention to how legal evaluation would be applied within contested proceedings. The lawyers' evaluations of LASW1's 'performance' in oral evidence are discussed below at p.251.

### **8.3.3 Communication and presentation: Legal knowledge - The SWET and awareness of *Re B-S* requirements**

The SWET is the key, overarching evidential document that LASWs produce, at the beginning of care proceedings and at the final stage, whether or not a case is contested. LAs also file other, specific assessment documents dependent on the issues in the case, which are summarised in the SWET. The cases of *Re B-S* and *Re A* set out requirements for LASW written evidence, to include 'all reasonable options' for the child, with analysis that explains which is their preferred plan and why (*Re B-S*), and to ensure the LA provides 'proper evidence to establish what it seeks to prove' (*Re A*). The quality of the analysis within the SWET and the presentation of written evidence (in relation to the requirements in both of these judgments) was an issue within the legal evaluations across all cases. The lawyers generally thought that the content of the SWET was not focussed enough on setting out the evidence for specific risks, with an analysis that would then lead to the recommended care plan. This suggests that LASWs generally were not aware of or did not properly address these legal requirements:

...[they think] the facts lead to an automatic conclusion. Well they don't...

[risks] have to be factually established, but then there must be an analysis where

you can say what the risks are going to be going forwards, and it's kind of to draw those strands together. And I think social workers are vulnerable if they are not doing the analysis and thinking through why what has been a fact before, remains a risk factor and why a child won't be safe. (Barrister for the mother, Case 2)

I think [the SWET] lends itself to repetition without a great deal of focused analysis and what I'm finding is, the *B-S* analysis [in the SWET] is not the gateway to very refined thinking.... I don't think anybody really thinks it through. (Barrister for the child, Case 1)

Case 4 provided an example where the LASW was cross-examined by the mother's barrister on the basis that she had not provided the full range of options, with information about what support the LA could provide for each option, as required in *Re B-S*:

[LASW4] hadn't identified all the care plans that the court is entitled to have before it. Now the case law is very clear that the court is entitled to have all of the range of options in front of it, including rehab under a care order and what a package of support would look like... In so many cases that I run for parents, it's not in there, and I will ask social workers in the witness box what that package would look like and they will say, 'but that's not[the] care plan'... but that's not relevant, the judge is entitled to have this information, [they] should have done it already. (Barrister for mother, Case 4)

The barrister for the LA offered a possible explanation for why the LASW had not addressed this aspect of her evidence properly:

... even in a non-adoption case, courts want to see a sensible *Re B-S* type analysis... I think [LASW4] fell into the trap of [thinking] ‘it’s obvious isn’t it’ – rather than actually sitting down and focusing on how she was going to evidence it. (LA Barrister, Case 4)

The barrister for the mother also suggested that the LA legal team, and the SW manager should and could ensure that these legal requirements within written evidence were understood and addressed, prior to LA written evidence being filed with the court:

...legal should be picking up on that... but maybe they’re not properly assisted by team managers and/or legal, to think about it and document it. They must think, well I know Mrs Smith better than anybody else and I know that this package of support won’t work. But they still need to be outlining it to the court. I think sometimes they do just get kind of entrenched... they’ve lived and breathed the case and so they haven’t got the ability to take a step back and think, okay well how could I make this work at home? (Barrister for mother, Case 4)

#### **8.3.4 Communication and presentation: Legal knowledge - ‘Having the court in mind’**

Some of the issues that can arise from not ‘having the court in mind’ when preparing written evidence have already been discussed, such as the importance of *Re B-S* analysis in the SWET. This section focusses on legal evaluations of the construction, preparation and presentation of LASW evidence, including how well the LASWs (and their managers and legal teams) understood and/or responded to the requirements of the legal process and expectations of the court.

The lawyers were clear that LASWs should be aware of the specific decisions that the court was likely to make at the end of the case, and tailor their final evidence accordingly:

... it's always as well to have in mind in the final evidence the decision the court has to make, and in this case [that] was... can [the child] be placed with dad? What are the problems arising out of these assessments? Can they be ameliorated in any way by support? (LA Barrister, Case 1)

With any case where you are trying to persuade the court to do something drastic like remove children on a permanent basis, you want to be sure that there is a very clear rationale for that. So you want the analysis in the final evidence to be up to scratch. But also you need the examples to show the reasons why you have come to those conclusions. (LA Barrister, Case 4)

A positive legal evaluation of LASW evidence was considered to be dependent on the LASW communicating their practice and opinion in a way that would persuade the court (the judge) in relation to their assessment of risks to the child, and specifically that the identified risks could not be managed:

... it's kind of putting it together in a way that is then going to convince the court that going forward the risk is too high, if you're saying you're not returning this child. (Barrister for the mother, Case 2)

I've come across detailed evidence, I've come across evidence of hard work, lots of sessions, but for example on interim removal you want to say what are the risks which justify immediate separation of child from parent. Why can't those risks be managed by any lesser intervention? And often it's buried in the [LASW evidence]. (Barrister for the child, Case 1)

Here the suggestion is that the LASW should make explicit the links between the information from assessment, the analysis of risk(s) and the recommendation, rather than the lawyers (and judge) having to ‘search’ for the analysis within the LASW written evidence.

The lawyers also commented on the need for LASWs to include specific, differential assessments of risks within their evidence, indicating that this is an important aspect of their evaluation of the LASW evidence and ultimately the judge’s evaluation and decision-making:

... something that needs to be borne in mind in doing final evidence, not all risks are of a similar magnitude... some are the sort of risks that may preclude placement and some are not. In this case for example there was an issue as to drug use, but the judge in the end rejected the idea that it was significant enough to preclude placement. (LA Barrister, Case 1)

First of all really sift and evaluate your evidential base and then extract your risks from your morass of concerns, accepting that not all risks are of equal magnitude, and the key concept is proportionate response to the risk. You’re not trying to eliminate risk. So extract your concerns, but then look at the magnitude of the risk, is it a big risk is it a small risk? And then look at whether there’s any supports, (Barrister for the child , Case 1)

The legal evaluations here relate to the identification and weighing up of risks within the SW process and the ability of the LASW to communicate this effectively in their evidence within the legal process. The data suggest that the ability of LASWs to shape their evidence to reflect the legal decision-making process could be supported or hindered by the in-house evaluations of LASWs’ evidence by managers and LA legal

teams. Variations in LASWs' understanding and awareness of the legal process, and the responsiveness of LA Legal teams when LASWs asked for advice, were commented upon:

Some social workers are so attuned to [the legal process], others seem to need a lot of guidance. Sometimes the LA legal department lets them down. Social workers have said to me sometimes they haven't been able to get hold of anyone in legal. (Barrister for the mother, Case 3)

...there are these processes, which everybody has been telling me about, but I'm just not convinced that it's happening... so I think it's the managers and the legal department who also need to become more focused and clear about these things (Barrister for the child, Case 1).

One lawyer commented on perceived difficulties with SW team managers who were not aware of, or familiar with, the legal processes involved in care proceedings. This was considered to affect the ability of LASWs to construct and prepare the written evidence adequately:

Team managers is where it falls down in [Local authority], because they are not clued in on court, and they don't focus their social workers. I don't expect a newly qualified social worker or even a three or four-year qualified social worker, to have a clear idea... although many do, what the evidential issues are and what they need to be particularly focusing on. I do expect that in all the hours they spend in supervision with their team manager, that their team managers will have some idea of that, so that they can focus and tailor their evidence a little bit before it even gets to us. (LA Barrister, Case 4)

In addition, the profile of the LA legal team was also seen as a possible area of difficulty, with some legal staff having limited direct experience of litigation and therefore lacking familiarity with judicial expectations about the evidence required for the legal decision making:

I think a lot of people who look at the work aren't litigators... It's just got to be a lot more forensic...to understand basic legal concepts that are currently at large in public law proceedings. Because it's only if you understand them can you structure your evidence, if you know what a judge needs to know. (Barrister for the child, Case 1)

#### **8.3.5 Communication and presentation: 'Knowing the family' - time spent with family members; a balanced, fair and compassionate approach; witness credibility and evidential reliability**

Across the cases, the lawyers considered that time spent with family members and a good working knowledge of the issues in the case were necessary both for effective SW practice and to ensure good quality evidence:

I think it came over that [LASW1] was very conscientious because she'd obviously done a lot of work with the father, and that's often at the root of a good social worker, you know they spend the time, which influences both the written evidence and the oral evidence. (LA Barrister, Case 1)

... [good] social workers have worked the case, they've lived the case, so they know it back to front... (Barrister for the mother, Case 2)

[The LASW] needs a very good grasp of the case and a working knowledge of Mum, Dad, the children... Better that a social worker is on the ground doing that than focussing on research or theory – they need to communicate effectively with the people they work with. (Barrister for the mother, Case 3)

... it needs to come across in evidence, that they know the family... properly and in detail... [good LASW witnesses] know the case, they know the background... (Solicitor for the children, Case 4)

In these quotes, the lawyers highlight the links for them between LASWs who engage meaningfully with family members in their practice and their legal evaluations of the LASWs' evidence. Clearly this is not the only factor in a positive legal evaluation of evidence, but it was highlighted across the cases as an important indicator of the likely quality of the SW practice and also the practitioner. Therefore, for these lawyers there were clear links between conscientiousness, knowing the case, effective communication with family members and the quality of the evidence given by social workers.

A balanced and fair approach within LASWs evidence was also highlighted as important in lawyers' evaluations of LASWs as professional witnesses. The concept of fairness is fundamental in all legal proceedings (Human Rights Act 1998, Sch. 1 Pt. I Article 6; FPR 1(1); Galligan 1996) and therefore it is unsurprising that it forms a key aspect of the legal evaluations of the quality of LASWs' evidence. This is discussed further in Ch 10 (p.302). The lawyers made some general points about the importance of balance and fairness in LASWs' work with families as well as in the presentation of evidence. They were clear that in their evaluations of LASW evidence and of LASWs as professional witnesses, acknowledgment of positives and strengths in parents and family members would strengthen rather than weaken the LASWs' evidence.



I think you get an impression from the written evidence whether someone is being fair and balanced, and that they've explored all the options fairly, from the point of view of everyone involved. (Barrister for a father, Case 4)

The reasons why I thought she was good is I thought she was well-balanced, which is always a good thing, you know she gave full credit to the parents for what they'd done well... (LA Barrister, Case 1)

I think it's important that social workers aren't sort of showing a particular dislike, or like, of a parent... Even if it's a case where parents have behaved in a particularly bad way towards the children... When you're wanting a final order or a placement order, actually if you can concede some ground it gives strength to your overall conclusion, that you are prepared to accept that there are some limited positives. (Barrister for the mother, Case 2)

...[LASWs need to be] balanced, fair, able to identify positives, make concessions where appropriate, so for example if I'm saying to a social worker: the quality of contact's good isn't it? I would expect in a case where it is good for them to say yes. Not 'there was [once] a contact that was poor'. That's just demonstrating an entrenched, steadfast position... [it's] more balanced and better quality when the social worker is able to say: 'yes contact is good'. It doesn't eliminate their concerns, but they will come across and find favour more with the court if they are fair and balanced. (Barrister for the mother, Case 4)

Two of the sample cases provided contrasting examples of this issue of balance. In the first quote below, LASW2 was viewed as balanced and fair in relation to the mother (against whom the evidence was overwhelmingly negative) and balanced in her analysis for the proposed care plan that the siblings be separated.

She is a very strong social worker [LASW2], very good in oral evidence. She knew the case inside and out. She did make some concessions in the witness box for mum, and in writing... the separation of the siblings was quite a sensitive and delicate issue, she did a very good needs assessment of the children... We talked in the morning about the balancing exercise of separation of the siblings, and she was able to identify the [pros and cons] for both. She made concessions in her oral evidence when it was put to her by mum['s barrister] and the judge that it would be harmful for the children to be separated. But she concluded that it was more harmful, particularly for the little one, to be placed together... Her evidence both in writing and orally was very good. (LA Barrister, Case 2)

There was also much evidence 'against' the mother in Case 4, however LASW4 was evaluated by the lawyers in the cases as presenting a negative bias in her written evidence about the mother, which was reinforced by her responses to cross-examination by the mother's barrister:

[LASW4] failed to identify any positives at all in the final social work [evidence] template, and there were positives, not enough to consider a rehab of any of the children, but there certainly were positives... [the mother had] definitely started to engage with services, she'd reduced her cannabis intake, and none of those featured in the analysis. And that gave me an inroad to argue how was it a balanced analysis if you haven't factored in any positives? And where she didn't help herself, was by not conceding any of the positives in the witness box either. But a lot of social workers fall into that trap... I see it all the time. So, the criticism for her in writing and orally was it needed to be more balanced. (Barrister for the mother, Case 4)

In the same case, the solicitor for the children explained that her evaluation of LASW4's proposed care plans was appropriate for the children. However LASW4's presentation of her written and oral evidence, and in particular a lack of balance, led to a negative evaluation of her as a professional witness, linked here to a lack of experience as a witness in contested proceedings.

I think the worry was with her evidence was the balance... she couldn't say anything positive. So even though the plan was right, the recommendation was right for the children, it just gets everyone's backup... She knew the case but she was very worried about not showing the plan was right. I think she was worried that if she started saying positives it would show holes in her assessment... I don't know if that's maybe because [LASW4] hadn't given much evidence. (Solicitor for the children Case 4.)

The lawyers noted that LASWs who demonstrated compassion and kindness in their evidence, particularly about parents in contested care proceedings, would be more likely to be evaluated positively as professional witnesses.

I think [LASW2] was as kind to her as she could be, and I think that's important... social workers, in an effort to make sure that the judge makes the order they're seeking, can lack a bit of compassion when they're giving evidence, because they want to make the point. And [LASW2] didn't do that, she was quite kind to mum. I mean her view was clear, but I think she managed to combine that with being not too critical, even though clearly a lot of the evidence was very critical of mum. (Barrister for the mother, Case 2)

One lawyer drew on her wider experience of care proceedings to provide an example of a link between fairness and compassion in oral evidence, also highlighting the importance of not adding to the distress of the family members in the case.

... [LASW X] knew the case inside and out. They were very fair. And the way that they talked about mum and dad wasn't negative... the tone of their voice, it was very sympathetic... I think it helps parents when they are listening rather than having somebody say this is horrible, this is horrendous. (Solicitor for the children, Case 4)

The lawyers' evaluations of LASWs as professional witnesses as presented in the sections above indicate that content that demonstrates the LASW 'knows the family' is a feature of good quality and potentially expert LASW evidence. It is also clear from the data that this is a multi-layered or multi-dimensional 'knowing', resulting from a combination of time spent working with the family using a relationship based approach, and the application of a balanced and compassionate analysis.

... [good] social workers really know their case inside out and why the facts of that particular case are leading to a particular, reasoned conclusion. And it's the added thought process that's gone into that, not just the regurgitation of what's happened and conclusion. The analysis is of better quality. (Barrister for the mother, Case 2)

Sometimes it can compensate for any flaws in the evidence if the judge feels that, even if [LASW] hasn't been able to express it as brilliantly as they could do, nevertheless the instincts are there and the judgement is there. So the fact that you've done the social work I think often stands the social worker in good stead when it comes to the evidence. (LA Barrister, Case 1)

In these quotes, the lawyers make links between effective articulation of knowledge of the family, a reasoned analysis and recommendation, and the credibility and reliability of the LASW as a practitioner and professional witness. They also suggested that where there are limitations in the LASW evidence, a positive legal evaluation may still be achieved providing the LASWs can demonstrate that they have ‘done the social work’ and exercised professional judgement within their analysis.

The next section focusses on the LASWs’ presentation in the courtroom during contested hearings, and in particular the impressions that the LASWs created during their evidence in chief and responses to cross-examination. Data were drawn from interviews with lawyers, who also referred to their wider experiences of care proceedings.

## **8.4 Legal evaluations of LASWs’ oral evidence within the sample cases**

### **8.4.1 Communication and presentation: Preparation – ‘having the court in mind’**

When considering the features of ‘good’ oral LASW evidence, the lawyers identified the need for LASWs to prepare for contested hearings, in particular to support the effective communication of the LASWs’ knowledge of the family and the case in their oral evidence.

‘Know your case’ is always what I say to social workers, if I’m giving them advice before they give evidence. And the ones that have gone to the trouble of going through notes find it a lot easier I’m sure than somebody that just tips up on the day... (Barrister for the mother, Case 2)

You can tell that obviously they know the case, they know the background, that's always key, you know that you can see that they've read the papers beforehand. (Solicitor for the children, Case 4)

However, the lawyers were also clear that in preparing for oral evidence, the LASWs' needed to 'have the court in mind'; that is, they should try to anticipate the lawyers' and the judge's scrutiny of their written evidence, at that stage in the case.

Someone who is good at giving evidence will obviously be comfortable with the papers, and with the assessments which have been carried out, and will have spotted any tensions or inconsistencies, and explored, thought about any criticisms which might be made of them in the witness box. That would make an impressive witness, because of course they would be prepared to answer these things and to justify them. (Barrister for a father, Case 4)

The ones that are good are usually the ones that [have] done the social work, usually experienced, they're not phased by being asked the questions, they're not phased by being challenged because they know the barrister is just doing their job and they know they're just there to answer and to defend this, and the barrister is just there to put the case. (LA Barrister Case 1)

The importance of LASWs 'having the court in mind' when first preparing and constructing their written evidence was discussed earlier (p.243). In relation to preparing for oral evidence, the suggestion is that LASWs need to consider again the court's potential scrutiny of their written evidence within a contested hearing, including the ways in which their evidence may be challenged. Preparing to give oral evidence therefore requires the LASW and those assisting them (their SW manager and their LA legal representative), to have an informed understanding of the legal processes in

contested hearings and the questions that the LASW might be asked by the different parties. According to Collins and Evans (2007), this requires the LASW, SW manager and LA legal representative to be appropriately socialised in the legal processes and practice involved in contested care proceedings. It also requires the LA legal representative to be appropriately socialised in social work knowledge and practice - to have 'Technical Connoisseurship' in relation to social work - thus enabling effective in-house legal evaluation of the evidence, in order to alert the LASW to possible areas of cross-examination.

Case 4 provided an example of the importance of the LA legal representative's awareness of the LASW's level of experience, particularly giving oral evidence in contested proceedings. LASW4 was an experienced practitioner, with whom the LA lawyer had worked once before.

... the only case I've done with her previously was in [month]... on that case she was absolutely brilliant... she didn't have to give evidence in the end, partly because her [written] evidence was so good... So that was my previous experience of her. She also comes across quite confident, so I think I thought she was more experienced in giving evidence than she actually is...when I found out [afterwards] that she'd only given evidence once before... then I felt really guilty, because I hadn't really given her the 'giving evidence' pep talk (LA Barrister, Case 4)

In the other cases, discussions between the LASW and the LA lawyer about potential gaps or areas of weakness in the evidence were observed during pre-hearing discussions (Observations pre-hearing discussions Cases, 1, 2 and 3 FH). The LA lawyer in Case 4 acknowledged that they made assumptions about LASW4's level of experience of

giving oral evidence, and so gave less attention to preparation of the witness. It seems likely that this was one factor (amongst others discussed elsewhere), that contributed to the difficulties LASW4 experienced in creating a positive impression as a professional witness. This is discussed further in Chapter 10 (p.285)

#### **8.4.2 Communication and presentation: Performance - forensic clarity and balance**

Similar to the data about written evidence (p.247), lawyers considered it important that LASWs should present as ‘balanced’ in their oral evidence, acknowledging positives and strengths in relation to family members, as well as identifying risks. A lack of balance in oral evidence was highlighted as influencing the impression given by the LASW in the courtroom.

...you cannot come across as defensive and you will look unbalanced if you don’t put in what positives there are... [LASW4] did come across as quite rigid, and a little bit defensive. (LA Barrister, Case 4)

Another important feature in the presentation of oral evidence was the ability of the LASW to demonstrate an understanding of the purpose of their evidence within the legal process and to be explicit in their identification and analysis of risks.

[Evidence] is to fulfil a purpose. It’s not just Jackanory is it? (Barrister for the child, Case 1)

The purpose of evidence and the need for ‘forensic clarity’ was explained by the lawyers in relation to clarity about the reasoning within different risk assessments with the case, and clarity about the rationale for the range of decisions taken in the case, supported by evidence of critical reflection along the way.



I suppose it is that the reasoning is explained for the decision-making, and that it is properly evidence-based, both in relation to, in my client's case not returning the children to her, and the reasoning for the decision to split the children, (Barrister for the mother, Case 2)

I think I'd say have the information at their fingertips, for every decision have a mental idea of who made it, any key decision in the case, whether it's to reduce contact, not to ask for an assessment, who made it, what was balanced, what was rejected? How was that decision communicated? When you received new information did you go back and reflect on it, of whether that remained the right decision? And evidence of that kind of thought process. (Barrister for the child, Case 1)

I've had a couple where they've been really stand out, no matter what questions you put them, they're going to know this case, they know the answers, they know what they're doing, and they know the plan is right. (Solicitor for the children, Case 4)

These features were considered likely to promote a favourable impression of the LASW as a professional witness during their oral evidence, even where the LASW was not a confident or 'natural' public speaker or performer.

You know being a good witness is not a question of being a good speaker, or a particularly confident person, but if you are comfortable with your material and what you are recommending to the court and you have explored in a fair way all the alternatives, it's difficult to see how you could go wrong really. (Barrister for a father, Case 4)

This links again to Collins and Evans' (2007) theory of expertises and the need for LASWs to be socialised in the requirements of the legal process and the expectations of the court, in order to be able to prepare their written evidence appropriately and communicate their professional opinion effectively in oral evidence.

#### **8.4.3 Communication and presentation: Performance – demeanour**

Another key aspect of the legal evaluation of the LASWs' oral evidence related to their demeanour during their evidence, how this influenced their presentation in the courtroom and the consequent impressions they created as professional witnesses. This aspect of LASWs' practice in care proceedings links with Goffman's (1959) dramaturgical theory about the presentation of (in this study) a 'professional' self. In particular, the theory assists with understanding the LASW's presentation in a 'frontstage' environment, highlighting the importance of 'backstage' preparation and impression management techniques, which aim to create as positive an impression as possible.

One of the lawyers offered her evaluations of the best and worst oral evidence she had seen from LASWs, in her wider experience of care proceedings, which illustrate some of the issues relating to impression management and performance (Goffman 1959).

The worst example was a social worker who went to pieces and caved with every question. She was an excellent social worker, fantastic on the ground, but her head went and she was frightened and nervous. She felt dreadful afterwards, in tears, felt she had let everyone down. She had never been to court, never been on a training course – people assumed she would be ok because she'd been qualified for years (Barrister for the mother, Case 3)

In this example, the emotional impact of fear and anxiety about the unfamiliar legal environment, and navigating a legal process that she was not been prepared for, appears to have prevented the LASW from communicating effectively with the court during her oral evidence. Additionally, this example highlights the dangers of relying on credentials such as length of time qualified as an indicator of experience of contested hearings and giving oral evidence (as occurred in relation to the LA Barrister's assumptions about LASW4, also discussed at p.285). Collins and Evans' (2007) theory of expertises differentiates between expertise in 'doing' SW (Contributory Expertise) and expertise in communicating SW practice and professional opinion expertly to a legal audience, in a courtroom environment (Interactional Expertise). Collins and Evans (2007) say that these different types of expertise require specific types of experiences and processes of socialisation. In the example outlined in the quote above, it appears that although experienced in practice with children and families, the LASW lacked socialisation in legal and courtroom processes, which led to anxiety and significantly affected her performance in oral evidence and the impression that she created as a professional witness (despite her being 'an excellent social worker').

In contrast, the same lawyer gave her evaluation of the best example of LASW oral evidence she had seen, in her wider experience of care proceedings:

[The LASW] was qualified approximately 10 years at the time... She looked very smart in appearance, wearing a suit. She always came fully prepared... She always knew how to address the judge properly, and been on court skills training. She consulted other social workers and the team manager prior to giving evidence... The SWET was excellent... She spoke slowly and clearly. She showed empathy for the parents even though she was recommending adoption.

She gave parents lifts to and from court... She was the best social worker I've ever seen giving evidence – she just got it. (Barrister for the mother, Case 3)

In Goffman's (1959) terms, this LASW employed effective 'backstage' preparation, which influenced positively their 'frontstage' performance and the impression created by their oral evidence. The application of court skills training (such as addressing the judge appropriately) is likely to be a useful technique to create and support a positive impression of a respectful, professional witness. Likewise, 'backstage' consulting with colleagues, and reading the papers prior the case (being prepared) would support a 'frontstage' impression of a conscientious witness. Also, a balanced and compassionate approach to parents in 'frontstage' written and oral evidence, is likely to promote the impression of a credible and reliable witness, rather than a witness who has a dislike of, or bias against, family members. Finally taking care with verbal articulation in the 'frontstage' environment of the courtroom (speaking slowly and clearly) and a smart physical presentation (appropriate professional dress for the courtroom) is likely to support an impression of a careful, professional witness who takes seriously their role and respects the legal process.

The lawyers' evaluations of the demeanour and other aspects of the 'frontstage' performance of the LASWs' oral evidence in the sample cases also included both positive and negative features. The LA lawyer and the lawyer for the child in the case gave positive evaluations of LASW1's performance in oral evidence:

... sometimes witnesses and indeed advocates can get a slightly stuck in the headlights feeling in court, where you just freeze and and you can't answer. And there wasn't any of that. I felt she stuck to her guns well but also gave credit where appropriate. She answered the questions, she wasn't too lengthy or too

monosyllabic, there was a nice balance in terms of answering the questions. (LA Barrister Case 1)

... she was excellent, she made appropriate concessions, she was very calm, didn't allow herself to be flustered or get into an argument, wasn't defensive in demeanour. I thought she was very good. (Barrister for the child, Case 1)

In these examples, the lawyers' evaluations of LASW1's oral evidence highlighted her demeanour (calm, not flustered), as well as the content of her evidence (balanced, concise). This combination of content and demeanour was also reflected in relation to LASW2 in Case2:

... yes she was calm, and she maintained her point of view, and she did concede on the positives. (Barrister for the mother, Case 2)

From the data, the features of a positive 'demeanour' in creating a positive impression as a professional witness appear to be a calm, composed presentation, underpinned by a respectful, professional approach to the court and the legal process, within a fair and balanced analysis of the issues in the case. This can be summed up by one of the lawyers, in their evaluation of LASW3 as a professional witness:

...good in court, good with families, an 'all-rounder' (Barrister for the mother, Case 3)

The next chapter focusses on the judicial evaluations of the LASWs' evidence in the sample cases, drawing on data from observations of the FHs and analysis of the judgments in each case.

## **CHAPTER 9: JUDICIAL EVALUATIONS OF THE LASWS' EVIDENCE, AS EXPRESSED IN THE HEARINGS AND IN THE JUDGMENTS IN THE PHASE 2 SAMPLE CASES**

### **9.1 Introduction**

In this chapter, the focus is judicial evaluations of the LASWs' evidence, as expressed in the hearings and the judgments in the sample cases. Data are presented from observations of the judgment hearings, and analysis of the written judgments (where available) delivered in each case. As explained in Chapter 4 (p.114) a decision was made not to request permission for interviews with the judges after the contested final hearings, due to ethical issues. Therefore, the analysis here is based on the questions that the judges put to the LASWs during their oral evidence (observational data), and comments in the judgments at the end of each case (see Appendix U. p.379). These data are explored separately here, reflecting the differences between the data sources. It should also be acknowledged that the purpose of judgments is to provide an explanation of the legal decision, reflecting guidance for the production of judgments (as set out in *Re B-S*), rather than a specific account of the judicial evaluation of the LASW evidence. Nonetheless, it is proposed that judicial comments in the judgments will provide some indicators of the judicial evaluations of the LASW evidence in the cases.

### **9.2 Judges' questions to LASWs during oral evidence**

Contested hearings within care proceedings may be listed if the threshold evidence for removal of a child (CA 1989 s31(2)) and/or the care plan of the local authority (CA 1989 s31A) is disputed by any of the parties, and an agreed position cannot be reached

in pre-hearing advocates' meetings or other discussions between the parties. During a contested hearing, oral evidence and cross-examination will be limited to the issue(s) in dispute (as opposed to addressing the whole of the evidence in the case), reflecting case management requirements and the avoidance of delay, and the court's role in control of evidence (discussed at p.29).

In each of the sample cases, the judge interjected to ask questions of the LASWs during their oral evidence. These are categorised here into three types of judicial question:

**clarification, elaboration** and **discursive** questions. Examples are provided here of each type of question, followed by discussion of the interactions and the indicative judicial evaluations of the LASWs as professional witnesses.

### **9.2.1 Clarification questions:**

This was the most common type of question across the cases, with all of the judges interjecting in this way at various points during both the LASWs' evidence in chief and their cross-examination. Examples of the clarification questions included: requests for specific, additional details about the proposed contact arrangements in the care plans (Observations Cases 1, 2, 3 and 4 FH); information relating to aspects of the social work assessments, such as parental attendance/non-attendance at assessment sessions (Observations Case 4 FH); and particulars of when and how parents shared specific information with the LASW (Observations Case 1 FH).

In some instances, it appeared that the judge was checking their understanding of the LASW's written evidence, for example, the detail of contact arrangements as proposed in the care plans. In other instances, for example issues relating to the SW assessments, judges appeared to be seeking additional information not provided in the LASW's

written evidence, and which had not been brought out by the lawyers' questions to the LASW. In one case, such judicial questions appeared particularly necessary, as the barristers for the fathers in the case (who were not opposing the care plans) asked no questions at all of the LASW. (Observations Case 4 FH). In this case, it appeared that the judge needed to ask questions of the LASW witness, to address gaps or lack of clarity in the evidence relating to the fathers, so as to acquire the required information (in evidence) to formulate their judgment. This reflects a key aspect of 'judgecraft', whereby the judge must ensure that any information they subsequently rely on in their judgment has been placed before the court within either written or oral evidence (Ryder 2019).

### **9.2.2 Elaboration questions:**

This type of question from judges to the LASWs was also observed in all of the cases. Elaboration questions included: requests from the judges for the LASWs to expand on the information provided about how they had weighed and balanced risks within their analysis of assessments information about parents (Observations Case 3 FH ); and the types of support that had been considered or could be available for all realistic placement options covered in the *Re B-S* analysis in the SWET (Observations Case 1 FH).

Across the cases, these elaboration questions appeared to reflect a judicial desire for more depth of information about process-related aspects of the LASW evidence, including how the LASW had conducted specific aspects of the analysis process and arrived at a particular conclusion. This contrasts with the clarification questions, which were focussed on eliciting additional information about events or detail about plans. In



Case 3, the judge asked the LASW several ‘elaboration’ type questions about her assessment of the father and the weight she had attached to the individual risk factors she identified. LASW3 provided detailed responses to these questions, which explained her ‘thinking process’ and these responses appeared to be accepted by the judge on each occasion of asking (Observations Case 3 FH). In Case 1, the LASW referred during cross-examination to *Re B-S*, saying she had considered all the available support options, as required. The judge then interjected to ask LASW1 to expand her answer and to list all the possible types of support that she had considered. LASW1 provided a detailed answer to this, and the judge did not pursue the issue further, suggesting they were satisfied with the response (Observations Case 1 FH).

As with the clarification questions, the need for judges to interject and request elaboration of aspects of LASWs’ written evidence may reflect weak communication by LASWs of information required by the court, suggesting a lack of understanding of the evidential requirements. However, it may also reflect the lawyers’ failure (from the judge’s perspective) to ask pertinent questions of the LASW which address all the relevant issues that the judge considers they need to formulate their judgment. The judgment in *Re B-S* criticised the approach of some judges to the formulation of their judgements and provided ‘guidance’ on the appropriate way to construct judgments, adopting a ‘holistic’ rather than ‘linear’ approach. The judges in the sample cases will have been mindful to ensure that their judgments satisfy the requirements and so reduce the risk of an appeal. As such, both types of judicial question considered so far, clarification and elaboration, can be understood as mechanisms to focus the LASW evidence on information required for judicial decision-making, and to support judges to construct legally compliant judgments.

### **9.2.3 Discursive questions:**

The term ‘discursive question’ is introduced here to categorise a particular type of question and answer exchange observed between the judge and the LASWs in Case 2. In this context, the term discursive is used to categorise judicial questions that are not related to specific aspects of the evidence in the case. Rather, discursive questions ask the LASW about general areas of theory and/or research, that may or may not be directly relevant to and applied within the issues in the case. Although this type of question occurred only in Case 2, the use of discursive questions by the judge appeared to promote and encourage a type of professional discussion of the LASW’s approach in practice and their evidence in the case. The resultant exchange between the judge and the LASW appeared important in relation to judicial evaluations of LASWs’ written and oral evidence, particularly in relation to professional expertise, and so is explored here, albeit tentatively, as a distinct category.

This particular case was described by one lawyer as a ‘difficult and sensitive’ case (LA Barrister Case 2), due to the proposed plan to separate the siblings, with a recommended plan for adoption for one child and long term fostering for the other. The legal and arguably moral dilemma as to whether siblings should be permanently (legally) separated, by one of them being placed for adoption, may have influenced the judge to focus in particular on assessing the LASW’s knowledge base in relation to differential placement outcomes, as applied to the children in the case. There was no appointed independent expert witness, therefore the LASW and the Children’s Guardian were the court’s only source of professional opinion. Arguably LASW2 had demonstrated expertise by including appropriate references to theory and research relating to this and other aspects of the case in her initial and final written evidence, which were subsequently positively evaluated by the LA lawyer and the lawyers for the

mother and the children in their interviews (LA Barrister Case 2; Barrister for the mother, Case 2). Based on LASW2's credentials and experience as set out in the initial and final SWETs, and the quality of the written evidence, it is likely that the judge had formed a favourable impression, prior to LASW2's oral evidence. Additionally, this judge had conducted all the earlier hearings so they would have gained an impression over time of the LASW's court practice. This contrasted to the other sample cases, where Recorders were allocated for final hearings and therefore had no prior involvement in the case nor with the professionals working on it.

During LASW2's evidence in chief and cross-examination in the FH, there were many interjections by the judge, including questions of clarification (for example about events) and elaboration (for example about the process of the LASW's analysis of the mother). During cross-examination of LASW2 by the mother's barrister, the judge also interjected with discursive questions about the potential short and long term impacts on the children of separation; there then followed a discussion between the judge and LASW2 about the application of attachment theory to care planning and decision making. The judge asked LASW2 specifically about potential issues of separation, loss and identity for the siblings in relation to the proposed different permanence plans.

During the exchange, the judge made reference to knowledge acquired from their own experiences of hearing evidence from independent experts (independent social workers and psychologists) about the application of attachment theory in care planning for children, in other cases (Observations Case 2 FH). The judge appeared to be interested in discussing and evaluating whether and why the siblings should be separated.

The discursive questioning by the judge in this case appeared not to be 'testing' whether or not LASW2 possessed the appropriate knowledge base to inform her recommendation. Rather it appeared that the judge sought to engage the LASW in a

discussion about the application of her SW knowledge and the uncertainties of predictive decision making, particularly when balancing the short term and long term needs of the children in the case. This feature of evaluating professional knowledge also differentiates discursive questions from clarification and elaboration questions, with discursive questions focusing on eliciting and evaluating the LASW's professional opinion. The use of discursive questions by judges may also be a matter of judicial style, and level of experience. For example, in this study, the Recorders, whilst all experienced family law barristers, were not as experienced in the judicial role as the CJ in Case 2, and therefore may not have been as confident or comfortable with this less formal style of questioning. By asking discursive questions, there seemed to be an implicit acknowledgement by the judge in Case 2 that this was a LASW witness with professional expertise, with whom the judge could engage in an informed discussion that would elicit professional opinion to inform the judicial decision. Of course, it should be acknowledged that if this (or another LASW) did not demonstrate the required knowledge in response to discursive questions, they could be exposed as an inadequate professional witness, whose opinion could not be relied on.

According to Collins and Evans (2007), in order to evaluate the LASW's response to discursive questions about aspects of SW knowledge, the judge would need to know enough about the issue to make a judgment as to LASW2's expertise. In other words, to make appropriate evaluations of LASW evidence in care proceedings, judges need to have or acquire a meta-expertise termed 'Technical Connoisseurship'. It seems that in this case the judge was drawing on knowledge acquired from significant experience in care cases over many years, to evaluate the LASW2's expertise. Exposure to and experience of LASWs and their evidence in care proceedings should enable judges (and lawyers) in care proceedings to develop abilities to recognise skilful and knowledgeable

SW practice within written and oral evidence. In other words, Technical Connoisseurship may develop through ‘judgment honed by exercise’ (Collins and Evans 2007: 58). For many judges (although not all) prior experience as family law practitioners will provide some relevant knowledge, experience and insight about SW and LASWs. Nonetheless, recent research indicates that there is still more that can and should be done, to develop judges’ knowledge and understanding of SW, in order to promote more effective outcomes in care proceedings cases (Masson and Dickens 2019).

#### **9.2.4 LASWs’ responses to judges’ questions and potential influence on judicial evaluations of expertise**

By asking questions, the judges create an opportunity to engage directly with the LASW as a professional witness. Whilst not necessary in every case, this direct engagement is likely to contribute to the judges’ assessment of the LASWs’ credibility, reliability, and expertise. It seems likely that interactions between the judges and LASWs, and in particular the LASWs’ responses to the types of questions as outlined above, will contribute to judicial evaluations of LASWs as professional witnesses. Observations of these interactions may indicate how the judges’ questions and LASWs’ responses influence judicial evaluations. (The subsequent expression of these evaluations in the judgments (if any) is discussed in the next section.)

Across all the cases, the LASWs’ responses to judicial clarification and elaboration questions generally appeared to be accepted by the judges; for example, the LASWs were thanked by the judges for their responses, with the judges then (verbally or non-verbally) inviting the lawyers to move on, without pursuing further questions on that point (Observations Cases 1, 2, 3 and 4). In Case 2, there was a ‘discursive’ exchange

between the judge and LASW2, as discussed previously. This interaction did not appear to reflect a lack of ‘trust’ in LASW2’s evidence. Rather it seemed that the judge was asking discursive questions of LASW2 to engage with her as a professional ‘expert’ witness, and perhaps in a ‘performative’ way within the ‘frontstage’ of the court hearing (Goffman 1959). In this scenario, the judge would be demonstrating to all present in the courtroom (including the mother in the case), and on the court record, that there had been in-depth judicial consideration of the professional evidence, within a high-stakes decision-making process. Whilst conclusions cannot be reached about this (in part due to a lack of written judgment in this case), observations of the hearing indicated that LASW2 was able to respond authoritatively, and arguably ‘expertly’, within this discursive exchange. This is likely to have supported a positive judicial evaluation of her as a professional witness, demonstrating credibility, reliability and expertise (in Collins and Evans’ terms, LASW2 appeared to demonstrate Interactional Expertise). It is interesting to consider whether the judge in this case pursued the discursive questioning of LASW2 based on her apparent expertise within her written evidence, and LASW2’s responses to early cross-examination questions in the hearing. The size of the sample is acknowledged as a limitation of the study (discussed further at p.323), and the research design did not allow for interviews with the judges in the sample cases, after the final hearings. As such these ideas can only be tentatively proposed here, however further exploration of interactions between judges and witnesses in care proceedings may be of use to LASWs and other professionals, to assist them to prepare for giving evidence in contested hearings

LASWs’ demeanour in their responses to the judge’s questions may also influence the judicial evaluation of them as professional witnesses. This is an assumption made in many ‘court skills’ training programmes, and is linked to earlier discussions about

impression management techniques (Goffman 1959). Within the study, aspects of demeanour such as being ‘calm’ and ‘confident’ were considered by legal evaluators to engender judicial trust and confidence in the witness, and promote evaluations of professional expertise. From the observational data, LASW3 and LASW2 both appeared calm and confident in their evidence in chief, polite when challenged in cross-examination and at ease in responding to the judges’ questions, despite their differing levels of experience in contested proceedings and giving oral evidence (Observations FH Case 3 and FH Case 2). LASW1’s demeanour during her oral evidence was specifically commented upon within interviews with the lawyers (p.259) and in the judgment (p.274). Observations of LASW1’s oral evidence indicated that she remained calm and composed during her evidence in chief and cross-examination, and her communication with the judge when answering their questions was clear and polite. Despite her inexperience in contested proceedings, LASW1 appeared at ease in the witness box and she gave the impression of a respectful, willing, professional witness who was keen to ensure that her evidence assisted the court (not just her case). For example, LASW1 directed all of her answers to the judge by turning to face the judge when responding to each question. She also addressed the judge correctly, referring to them as ‘Your Honour’ in her responses. At one point LASW1 politely apologised to the judge that her answer (about the frequency of contact) might not have been clear enough, before providing further clarification (Observations Case 1 FH).

In contrast, LASW4 struggled to create a positive impression as a professional witness, as discussed previously (p.225). However, it is interesting to note that LASW4’s demeanour and responses to the judge’s questions appeared less defensive than when she was responding to her own lawyer, or the lawyers representing the other parties. During her oral evidence, the judge asked LASW4 questions that focussed on

clarification and elaboration of aspects of her evidence. The phrasing and tone of the judge's questions reflected an exploratory approach, which contrasted to the highly critical tone of the questions put to LASW4 by the lawyers during cross-examination. Responding to the judge's questions, LASW4 seemed willing and/or able to adopt a more thoughtful approach within her responses, suggesting perhaps that she was adversely affected as a witness by the style and tone of the cross-examination, which rendered her unable to provide an adequate professional response (Observations Case 4 FH). As discussed previously, it is also likely that LASW4's lack of understanding of the legal and evidential processes in contested hearings impacted on her, resulting in a 'defensive' demeanour within oral evidence. Nonetheless, as discussed in the next section, the apparently poor performance of LASW4 in evidence in chief and cross-examination did not, in the end, affect the outcome of the case.

### **9.3 Judicial commentary and evaluations in the judgments**

Appendix U. (p.380) sets out the types of judgments in the sample cases and indicates when and how the judgments were delivered. Analysis of the judgments focused on identifying references to the LASW's written oral evidence, and any comments or evaluations about the LASW's evidence by the judge. In Case 2 the judge delivered a summary judgment verbally in a judgment hearing, no written judgment was produced subsequently. Detailed researcher notes, verbatim as far as possible, were taken during this judgment hearing, allowing analysis of the judgment.

Across the judgments, there were variations in the extent to which the judges commented on their evaluations of the LASWs' evidence. In the verbal judgment in Case 2, no direct mention was made of the LASW's oral evidence (Observations Case 2



Judgment Hearing). Instead, the judge focussed on explaining the reasons for their decision, citing the short and long term implications for the children of the options for their future care, as set out within the LASW's written evidence, the proposed care plans and the report of the CG. This verbal judgment was more 'informal' than the written judgments, reflecting the delivery of the verbal judgment as a contemporaneous, summary explanation of the legal decision, and possibly reflecting that the judge had many years' experience of care proceedings.

In contrast, each of the written judgments in the other cases included an outline of the LASW written and oral evidence by the judge, along with varying degrees of evaluation of the LASW evidence and the LASW as a witness; this was usually contained within the judge's discussion of the issues and explanation of the legal decision. In Case 3, the judgment described all the evidence that had been considered in the decision, including both written and oral evidence from the LASW. In a later discussion section of the judgment, the judge explicitly evaluated LASW3's evidence, in relation to the social work assessments and disputed issues between the parties. In this evaluative section of the judgment, the judge explained the weight given to different aspects of the evidence. Additionally, there were indications in the judgment of the judicial evaluations of LASW3's reliability (the judge 'accepted' LASW3's assessment of the mother) and her credibility (the judge 'preferred' LASW3's evidence over the father's about an issue in dispute). (Judgment Case 3) There was no further, explicit evaluation within the judgment of the LASW3 as a professional witness, in relation to demeanour or other aspects of presentation during oral evidence. In the two other cases (Judgments Cases 1 and 4) the judges explicitly addressed issues relating to the LASWs as professional witnesses, in their judgments.

The judgment in Case 4 contained a specific section dedicated to LASW4's evidence, within the part of the judgment where the judge set out their 'findings'. This section addressed a formal submission at the end of the case by the mother's barrister, that LASW4's decision making and evidence had been 'flawed', thus directly challenging LASW4's reliability and credibility as a professional witness. The judge made no explicit evaluation of LASW4's oral evidence and her 'performance' as professional witness in the judgment, and stopped short of saying whether they considered LASW4's practice and evidence to be flawed. Rather, the judge explained that they had considered LASW4's evidence alongside the evidence of the other professional witnesses in the case, the CG and the independent expert in the case (a psychologist, who had assessed the mother). The judge stated that they considered and assessed LASW4's evidence within their 'global and holistic' analysis of the options for the children (following the guidance in *Re B-S*), and had specifically explored these issues with the relevant professional witnesses in oral evidence, within their own evaluation of all the evidence. The judge concluded that the suggestion that LASW4's evidence was flawed 'had not hampered' their decision-making in approving the LA care plans (Judgment Case 4). In this case, the independent expert witness (a psychologist) and the CG agreed with the LA's plan. If the court had not been able to rely on other professional evidence in the case, to compensate for the alleged flaws in LASW4's evidence, then it may be that the LA's application would have been in jeopardy. An outcome in those circumstances might have been delay in the proceedings, to allow for an independent social worker or other independent expert witness to be appointed, which would arguably have been detrimental for the children and the mother.

In Case 1, the judge also dedicated a specific section of the judgment to an evaluation of the LASW's evidence, providing an explicit and positive evaluation of the LASW as a practitioner and professional witness. The judge described LASW1 as:

an honest and credible witness. She was balanced, careful and fair... She impressed me as a diligent and conscientious social worker. (Judgment Case 1)

The judge further commented that LASW1 had clearly approached the assessment of the father with an open mind, providing support for him at an early stage and throughout the assessment process, to assist him to address the identified areas of concern and/or risk. In this way, the judge's evaluation included aspects of LASW1's practice with the family prior to the court hearing (her diligence and open mind in assessment of the father, and the provision of support services) as well as LASW1's presentation in oral evidence and communication with the court during the hearing (careful, balanced, honest and fair). Additionally, the judge included aspects of LASW1's demeanour in the evaluation of the oral evidence, such as a calm, polite demeanour and a balanced approach to cross-examination.

LASW1's careful and conscientious approach to her assessments contributed to effective 'backstage' preparation of her written evidence (Goffman 1959), which supported a level of confidence in her oral evidence and responses to cross-examination in her 'frontstage' performance in oral evidence, as discussed in her interview (p.217). LASW1 had been careful to consult with colleagues to support her understanding of the requirements and expectations of the legal process and the courtroom environment in a contested hearing. This, along with learning from prior court skills training, was likely to have supported her effective use of 'impression management' techniques in oral evidence (even without direct experience of contested proceedings). By seeking advice

to support preparation, and applying prior court skills training, LASW1 demonstrated Reflective Ability (about her lack of experience in oral evidence) and Interactive Ability (in applying basic ‘court skills’ in her communication with a legal audience). In Collins and Evans’ terms, this enabled LASW1 to communicate her social work expertise ‘expertly’, thus demonstrating Interactional Expertise, evidenced by the positive judicial evaluation of LASWS2 within the judgment (Judgment Case 1).

#### **9.4 Implications of the analysis of judicial evaluations of LASW evidence**

Legal changes now restrict the appointment of independent experts in care proceedings and arguably this makes both the LASW written evidence and the LASW’s performance in oral evidence more important than previously, for the judge’s decision-making. Cases 1 and 2 provided examples of cases without additional expert evidence, where the judges were reliant on professional evidence from the LASW and the Children’s Guardians to inform their decision and formulate their judgment. Within the written judgment in Case 1, there was detailed judicial evaluation of the LASW’s written and oral evidence, including the LASW’s ‘performance’ in oral evidence. In cases without additional expert evidence, this may reflect a need to ‘anchor’ a judicial decision in favour of the LA application, by reference to the diligence, reliability and credibility of the LASW witness. This reflects the judicial processes and ‘judgecraft’ involved in managing the evidential process, reaching a legal decision and formulating an appropriately constructed judgment (Kritzer 2007; Mack and Roach Anleu 2007; Fielding 2011). In Cases 3 and 4, the independent expert evidence in the case was aligned with the LASWs’ and the CGs’ recommendations, and in Case 4 it appears that this may have enabled the judge to ‘work around’ a poor performance by the LASW, by

relying on the Children's Guardian and the independent expert evidence, to grant the LA application. There was no case in the sample where the LASW evidence conflicted directly with that of an appointed expert. In such cases, it seems likely that for a LASWs' evidence to be 'preferred' over that of a court appointed expert, the LASW would need to demonstrate Interactional Expertise within their written *and* oral evidence.

It is proposed here that knowledge and understanding of the processes of judicial evaluation, decision-making and the formulation of judgments is an essential part of LASWs' socialisation in the practices and processes of contested proceedings, to enable LASWs to develop Interactional Ability and to realise Interactional Expertise within care proceedings (Collins and Evans 2007).

## **CHAPTER 10: DISCUSSION AND CONCLUSIONS**

This final chapter presents a discussion of key aspects of the data analysis: the theoretical frameworks applied within the study; features of LASW expertise identified from the data; and consideration of the underlying structural and system drivers and mechanisms that influence the practice and experiences of professionals in care proceedings. The chapter also provides a conclusion to the study, which highlights the relevance, contribution and limitations of the study, also identifying potential areas for professional practice development and further research.

### **10.1 Re-thinking the communication and evaluation of LASW expertise in care proceedings**

In this section, the application of the chosen theoretical frameworks within the analysis is discussed. It is proposed that this contributes to knowledge about the communication and evaluation of LASW evidence and expertise within care proceedings, by providing a more nuanced understanding of the social processes involved.

#### **10.1.1 Striving for Interactional Expertise in inter-disciplinary communication (LASWs)**

In Collins and Evans' terms, the combination of Contributory Expertise (CE), Reflective Ability (RA) and Interactive Ability (IA) enables Interactional Expertise to be realised, which is the communication of domain-specific expertise, 'expertly'. Thus, Interactional Expertise as a LASW witness requires social work practice experience

(CE), reflection on social work and legal processes (RA) and inter-disciplinary socialisation (IA), all of which can be developed and combined to promote ‘expert’ communication of LASW evidence.

All of the LASWs in the study were experienced in child protection social work, and so would be considered to have Contributory Expertise relevant to care proceedings.

However, the length of their practice experience varied (see Appendix P, p.373), and so the LASWs will have had differing levels of Contributory Expertise, dependent on their ability to learn from experience (as per developmental theories of domain-specific expertise, as discussed in Chapter 3, p.77). The widespread and long-established use of ‘court skills’ training for social workers reflects an understanding that having social work knowledge and practice experience will not necessarily ensure effective communication and a positive legal evaluation of practice within care proceedings.

According to Collins and Evans, for a LASW witness to achieve Interactional Expertise there needs to be an appropriate level of socialisation in the language and processes of the legal domain, to support the development of Reflective Ability and Interactional Ability. For LASW (and other) professional witnesses this means specific and effective socialisation in the adversarial legal process and environment, evidential requirements, and legal expectations of written and oral evidence. This should include understanding techniques and practices that may be employed by lawyers and judges to scrutinise, evaluate and challenge written and oral evidence.

A key issue identified within the data was the type and degree of ‘socialisation’ in the legal process that the LASWs had acquired prior to the study, in particular socialisation within contested care proceedings. It is only when the case is (or becomes) contested that other parties will have the opportunity to cross-examine the LASW in oral evidence, to challenge specific details or the overall approach within written LASW

evidence. It can be difficult for LASWs, their managers and their legal team to predict whether or when a case may be (or become) contested, particularly in the early stages of preparing initial LASW written evidence. It may also be difficult to predict the focus of later contested hearings, including whether this will involve challenges to the LASW written evidence. Inevitably, some care proceedings will include contested hearings, and so the potential requirement for LASWs to give oral evidence and answer questions in cross-examination should be borne in mind when preparing initial and subsequent written evidence, and when evaluating it 'in house'. A further difficulty in anticipating areas of potential challenge is that a 'weakness' identified in LASW written evidence would not necessarily result in a case becoming contested; this would require the active opposition to the overall plan by another party (for example, parent or Children's Guardian). Thus, in uncontested cases (which Masson et al 2008 found to be the majority in care proceedings), perceived weaknesses in LASW written evidence may remain unchallenged within the legal process. This means that criticism and/or constructive feedback arising from legal and judicial evaluations will not be communicated to the LASW, their managers and the LA legal team, and therefore the potential for learning from legal or other professional evaluation of LASW written evidence is confined to the in-house evaluation processes conducted by SW managers and LA legal teams. If there are weaknesses in these in-house systems and processes (as was suggested in Case 1, p. 293 and Case 4 p.279), this may limit the development of expertise in LASWs' communication of professional opinion. Further, as indicated in the data, when some cases are or become contested it can be surprising to LASWs and their managers that aspects or features of their written evidence are actively challenged, when they have apparently been 'accepted' in other (uncontested) cases, as occurred in Case 1 (p.193). If these issues in anticipating challenges to written evidence are not



understood and articulated by SW managers and LA legal teams, to LASWs within ‘in house’ evaluations of LASW evidence, then the development of Reflective Ability, Interactional Ability and thereby Interactional Expertise in LASWs’ evidence may be undermined. This is discussed further in relation to care proceedings as an adversarial system at p.291.

Court case files do not record whether a case has been actively contested or not (Masson and Dickens 2019). However, as contested cases are considered to be in the minority, LASWs’ and SW managers’ prior experience of contested hearings is not predictable and cannot be assumed, for example by LA legal teams. LASWs may be given or arrange opportunities to observe evidential processes in contested hearings, however if these are infrequent and/or not considered a priority within a busy caseload, then such opportunities may be limited. Cases where LASWs are required to give oral evidence may occur at the start of a LASWs’ career, or much later, depending on whether the care proceedings they are involved in are or become contested.

Consequently opportunities to gain experience giving oral evidence as a professional witness, or to observe other LASWs giving oral evidence, will vary in frequency and may not occur, despite extensive SW practice experience (for example LASW3 and LASW4 in the sample cases Appendix P. p373). In this way, both LASWs and their managers may lack experience of contested care proceedings. Formal court skills training involving role-play and (more recently) digital simulations and virtual reality resources are recognised as being useful to familiarise LASWs (and others) with the processes and issues involved in care proceedings (Reeves et al 2018). However, Collins and Evans would suggest it is unlikely that sufficient, specific socialisation in the techniques and practices of cross-examination and judicial questioning can be achieved, without direct experience of contested hearings. If such experience can be

acquired, and if it is combined with Reflective Ability, this should support the development of Interactive Ability and promote Interactional Expertise as a professional witness.

This issue of sufficient and specific socialisation in contested care proceedings was illustrated in the data. The LASWs in the study had a range of experience in, or exposure to, contested care hearings (Appendix P. p.373), which was not linked to their length of experience as a social worker. For example, LASW4 was an experienced social worker, but she had very limited experience of contested hearings, and she had not attended any specific court skills training. Despite LASW4 being an experienced and well-regarded ‘Advanced Practitioner’ within her LA, her preparation for the contested hearing was not appropriately underpinned by Reflective Ability to identify and rectify potential gaps in her knowledge and experience. She was also not able to apply Interactive Ability as to the evidential processes in contested hearings, to enable her to anticipate lines of cross-examination and understand the limited evidential focus of the hearing. This led to fundamental errors in LASW4’s overall approach to her written evidence, and to her ability to prepare for how she might be cross-examined in oral evidence, ultimately affecting (negatively) her presentation in the witness box. Additionally, for LASW4, it appeared that ‘in house’ evaluation processes did not rectify what was subsequently criticised in the contested hearing (a lack of balance in the LASW’s written evidence, p.253). The ‘in house’ evaluations failed to consider whether LASW4’s socialisation in processes within contested hearings, and thus her knowledge of potential evidential issues, was sufficient to enable her to prepare adequately for cross-examination. It seems likely (and was suggested in LASW4’s interview) that there was a ‘light touch’ approach to ‘in house’ evaluation of her written evidence, and to ‘in house’ preparation for her oral evidence, probably because LASW4

was an experienced social worker with ‘Advanced Practitioner’ status. Although the court ultimately granted the LA’s application, LASW4 had a very difficult experience during her oral evidence (p.211), which caused her a degree of upset at the time and afterwards, and which may have been avoided by a more proactive approach to her preparation and a more informed approach to the ‘in house’ evaluation process. This example highlights a need for SW managers and LA lawyers to pay attention to the level of experience of care proceedings (and in particular contested hearings) that a LASW witness has, in addition to their length of experience as a social worker.

Similarly to LASW4, in Cases 1 and 3, the LASWs had not previously given oral evidence in a contested hearing, however the legal evaluations of their evidence were positive, and in the case of LASW1, specifically praised by the judge (p.272). These two LASWs had been proactive in seeking out ‘in house’ support and guidance prior to the contested hearing, demonstrating (in Collins and Evans’ terms) Reflective and Interactive Abilities and the effective use of ‘backstage’ preparation (Goffman 1959). This confirms that LASWs should avoid assumptions that their experience and expertise as a social worker will necessarily translate into expertise as a professional witness, highlighting the difference between Contributory Expertise in social work and Interactional Expertise as professional witness in care proceedings (Collins and Evans 2007).

### **10.1.2 Striving for an effective ‘performance’ as a witness in contested care proceedings (LASWs)**

All the LASWs in the study were anxious to ‘do well’ in oral evidence, to promote the best outcomes for the children and the families (from their perspective) and to create or retain a positive reputation as a professional witness. Goffman’s (1959) concept of

impression management was used in the study to explain how effective ‘backstage’ preparation can support expert ‘frontstage’ performance, by deliberately managing the impressions conveyed as a professional witness to the legal audience (p.92). All of the LASWs described LA (in-house) ‘backstage’ preparation activities in the LA workplace, within their own SW teams and with their legal representatives, prior to contested court hearings. The purpose of these activities was to try to ensure that LASWs’ presentation and performance as a professional witness was as positive as possible, preferably demonstrating expertise. Preparation activities included drawing on prior formal court skills training and legal briefings, as well as more informal and case-specific preparation discussions, when it was known that a case would be contested. ‘Backstage’ preparation activities within the court building, on the days of the contested hearings were also observed, in the form of discussions between the LASW, their manager (if present) and the LA lawyer (p.216). This illustrated that the ‘back’ region, where ‘backstage’ preparation for oral evidence occurs, does not have to be in the LA workplace away from the court, rather it can be anywhere that the LASW, their manager, and their legal team might have preparatory discussions, not involving the other parties in the case.

The data also highlighted a general issue for LASWs in care proceedings in relation to ‘backstage’ preparation for contested hearings, which is the tendency for LA solicitors to conduct a case, until or unless the cases becomes contested. At this point, often due to availability for longer hearings, it is common for a barrister to be instructed for the contested hearing (Pearce et al 2011). This occurred in all the cases in the study, with the ‘backstage’ preparation discussions between the LASW and their (new) barrister occurring on the first morning of the contested hearing (p.215). Thus, the LA legal ‘backstage’ preparation for a LASW, to support impression management as a witness

giving oral evidence, could involve a range of discussions, often with a change of legal representative along the way. This inevitably introduces the potential for inconsistencies in the 'in house' legal evaluation and preparation processes, requiring the LASW to adapt to a new lawyer and possibly an altered legal evaluation of the evidence, on the morning of a contested hearing. Whilst a new lawyer may bring 'fresh eyes' to the LASW evidence in a positive way, these are factors that LASWs must navigate within their 'backstage' preparation for giving oral evidence, and which potentially affect their 'frontstage' performance (Goffman 1959).

An additional challenge with contested hearings is the availability of space and privacy in family court buildings for the parties' discussions with their legal representatives (Pearce et al 2011; Welbourne 2016). Ideally, LA legal 'backstage' preparation for a contested hearing would include one-to-one discussions with the advocate about how they planned to take the LASW through their evidence in chief; this is especially important for LASWs with no prior experience of contested hearings. One-to-one discussions of this type were observed between both LASW1 and LASW3 and their barristers in private court consultation rooms on the first mornings of the contested hearings. However, in Cases 2 and 4 these important 'backstage' discussions took place in a corridor of the court building, offering little privacy (p.218). Combined with the LASW meeting a new advocate for the first time, this environmental factor may affect the quality and effectiveness of the 'backstage' preparation process.

As discussed previously, LASW4's lack of experience of contested hearings and lack of 'court skills' training severely limited her understanding of the processes that awaited her in the contested hearing and meant that she did not prepare herself effectively. It would have assisted LASW4 to understand and recognise that her barrister would use her evidence in chief as an opportunity to clarify or add to points about which she might

face hostile cross-examination, from other parties. Arguably, LASW4 should have recognised her lack of experience in giving oral evidence (in Collins and Evans' terms, demonstrating Reflective Ability), and sought assistance and advice from her manager and/or her barrister prior to the contested hearing (to develop Interactive Ability). The LA barrister acknowledged in her interview that she had made assumptions about LASW4's experience and abilities as a professional witness, based on her reputation as an experienced social worker and 'Advanced Practitioner', and made clear that she would be careful to avoid such assumptions in the future (p.252). There were similar, limited corridor-based 'backstage' preparation discussion between LASW2 and her barrister. However, this did not seem to impact negatively on LASW2's 'frontstage' witness performance, which was positively evaluated by the lawyers in the case. LASW2 had extensive experience of contested hearings and giving oral evidence, and it was apparent that she did not require explanation about the evidential process. There are further links here with Collins and Evans (2007) in that a LASW's knowledge and understanding of what 'backstage' preparation they require, will be more accurate if underpinned by knowledge and understanding of (socialisation in) the language and practices in the 'front' region where their performance as a professional witness will take place. LASW2's prior socialisation in contested hearings meant that she was able to manage the less than ideal environmental conditions and acquire sufficient (for her) 'backstage' preparation, enabling her to present an 'expert' professional self in her oral evidence.

Analysis of observational data within the study also included consideration of 'frontstage' performance, and the identification of 'audience' as outlined by Goffman (1959). It is perhaps obvious that the idea of 'frontstage' performance would apply in the courtroom itself, during a court hearing and particularly during a LASWs' oral

evidence. However, other aspects of the LASWs' 'frontstage' performance were also observed in the study, including, pre- and post- hearing meetings and discussions between LASWs, LA lawyers, the CG and the lawyers for other parties. Within these discussions, it was apparent that the other lawyers and the CG were engaged in active evaluation of the LASW's evidence, by asking questions of the LASW, and discussing their thoughts and alternative options with them. These discussions took place in various settings with varying degrees of privacy, including consultation rooms, corridors and in the courtroom. Whilst not part of the substantive court hearing (the judge was not present) these formal and informal discussions included elements of legal evaluation, performance and presentation of a 'professional self' by the LASWs. Therefore, it can be said that the 'front' region in care proceedings comprises any spaces where a LASW is required to engage in professional discussion about the case and their evidence, in the presence of the other parties and their legal representatives, regardless of whether the magistrates or judge are present. This contrasts with Flower's (2016) study of criminal proceedings, where it was concluded that it was the judge's arrival in the courtroom, at the start of a hearing (or following a break or adjournment), that marked the commencement of the 'front' region and a 'frontstage' performance. It is vital therefore for LASWs to recognise all the potential 'back' and 'front' regions in care proceedings, to enable appropriate impression management outside as well as within the court room. In this way, LASWs can aim for the performance of an 'expert professional self' in all of these settings (Goffman 1959), thereby enabling (it is hoped) positive legal and judicial evaluations. This section began with an acknowledgment that all the LASWs in the study were striving for an effective performance in their oral evidence, to promote best outcomes for children and families, and to create or maintain a positive individual reputation as a professional witness. In the quote below, LASW1

also identified the importance (to her) of promoting positive impressions of her employer and her colleagues amongst the local lawyers and judiciary and, more broadly, the importance of representing the SW profession well, in the context of societal and judicial criticism and stereotyping:

...you want to put a good face on for the local authority... you don't want to go and be crying in the stand and stumbling over your words...you want to do your profession proud. You don't want to add to stereotypes of how social workers present in court. You want to rise above that and give us a good name, and show that you've worked hard and really defend the work that you've done with these families. (LASW1 Interview 2)

### **10.1.3 Applying Technical Connoisseurship in inter-disciplinary evaluation (judges)**

A key role for judges in care proceedings is to determine the credibility and reliability of a professional or expert witness, in order to decide if they will rely on their evidence (or not), including what weight they attach to the evidence in formulating their decision and judgement in the case (Fielding 2011; Ryder 2019). This requires the judge to understand and evaluate knowledge from a discipline other than law, highlighting an important element in the communication and evaluation dynamic within care proceedings, namely the judge's ability to understand, interpret and incorporate social work knowledge into their legal decision-making. There is a need therefore for the judiciary to have some knowledge of SW theory and practice, to underpin their evaluations of LASWs' evidence. Collins and Evans use the term 'Technical Connoisseurship' to refer to a type of meta-expertise, described as: 'the ability to judge an expertise without being able to practice it' (Collins and Evans 2007: 59). Technical



Connoisseurship does not require immersion in a domain, in the way that Contributory Expertise does, rather socialisation to the level of ‘acquaintanceship’ with the other domain is required, sufficient to enable informed judgments and evaluations. Applying this to the study, if a judge is sufficiently acquainted with the languages and practices of SW, then they should be able to make meaningful evaluations of the expertise (or otherwise) of the LASW’s written and oral evidence in care proceedings. Conversely, if a judge’s acquaintanceship with SW is insufficient and/or flawed in some way, then this could impede their evaluations of LASWs’ evidence within their decision-making, particularly those aspects relating to the application of SW knowledge and practice. As with the LASWs, and the requirement for socialisation within legal processes to support Interactional Expertise, the data highlight questions as to what is sufficient in terms of this ‘acquaintanceship’ with SW knowledge and practice, in order for Technical Connoisseurship to be achieved by legal and judicial evaluators.

The issue of judges’ understanding of social science knowledge has been explored, including in relation to its application within legal decision-making (see, for example, White 1998; Ward 2012; Masson 2016; Churchill et al 2018; Robertson and Broadhurst 2019; White and Gibson 2019). This issue was also reflected in the data, particular in relation to the application of attachment theory and judicial expectations of LASWs. Within the judicial focus groups, there was an emphasis on LASWs demonstrating knowledge and application of attachment theory in their evidence about children and families (p.171). The focus on this aspect of SW knowledge and practice is unsurprising, as attachment theory has underpinned social policy and SW practice with children and families for decades (White and Gibson 2019). It is therefore a well-established and relevant consideration within social work care planning processes, and judicial decision-making about permanence planning for children in care proceedings,

albeit there are critiques of its application and concerns about ‘distortion’ in practice (White and Gibson 2019). The exchanges on this topic between judges in the DJ and CJ focus groups (p.172) illustrate the importance that some of the judiciary place on attachment theory as an aspect of professional knowledge to inform SW practice. The data illustrate how the judges in the study approached this issue in terms of the type and levels of knowledge about ‘attachments’ they wanted LASWs to provide for the court. However, the data also exposed a rather simplistic articulation by the judges of key aspects of attachment theory and its application in SW with children and families; for example the use of the terms ‘good’ and ‘bad’ attachments and the expression ‘doing’ attachment within social work assessment and evidence (p.172). This could be considered as an indication of insufficient or ‘flawed’ judicial acquaintanceship with relevant social work knowledge, resulting in limited Technical Connoisseurship in understanding and evaluating the application of attachment theory in LASW evidence. It is expected that judges’ understanding of technical/scientific and theoretical fields (including child development and attachment theories) may often be limited and partial, hence the use of expert witnesses in some cases, and a recognised need for judicial education and access to research information (Churchill et al 2018). Prior to the legal changes reducing the numbers of expert witnesses in care proceedings, it was commonplace in many courts for clinical psychologists to be instructed specifically to provide independent expert assessments of ‘attachments’ for the court (Masson et al 2008; Masson and Dickens 2019). The data highlight the challenges faced by both judges and LASWs in the context of the reduction in numbers of independent expert witnesses instructed, particularly when judges then turn to LASWs (and CGs) to provide evidence that they can no longer acquire from independent experts such as psychologists. However, a question remains about whether (and how) effective judicial

evaluation of LASW evidence, which is based in theoretical and research knowledge, can be achieved. Further, what is sufficient in terms of acquaintanceship with areas of SW knowledge and practice, in order for judges and lawyers to be able to conduct meaningful evaluations of social work expertise? This is discussed further in section 10.3 (p.305) in relation to structural and system influences on practice in care proceedings.

Judges in the study also wanted the LASW to be able to explain the SW practice and decision-making that underpin their recommendations in individual cases, particularly within contested proceedings (p.171). Thus, in addition to knowing about specific areas of theoretical or research knowledge, judges need to have and/or acquire Technical Connoisseurship in relation to how SW knowledge is applied within LA decision-making processes, in order to evaluate the appropriateness of this in individual cases. This was reflected in the observations of judicial questions to the LASWs during their oral evidence, which illustrated several types of question and answer exchanges between the judges and LASWs in the sample cases (explained in Chapter 9, p.261). There are various reasons why judges may ask questions of a LASW witness during their oral evidence. Judicial questions may indicate that a judge is ‘probing’ for clarification or elaboration from the LASW’s written and oral evidence, as was observed in all the sample cases (p.262). Judicial questions may also relate to inadequate cross-examination (in the judge’s view) by the lawyers for the parties, with the judge then asking questions to acquire information they need, to formulate their judgment (p.263). Whilst not apparent in any of the sample cases, it may also be that judicial questions reflect a lack of trust in the witness, with the judge seeking to ‘test’ the witness’s reliability and/or credibility beyond the efforts of the lawyers in their cross-examination. Relevant to the concept of judicial Technical Connoisseurship, a

distinct category of ‘discursive’ judicial questioning was observed in one case (Case 2) (explained at p.264). The ‘discursive’ questions featured relatively lengthy ‘question and answer’ exchanges between the judge and the LASW, focussing on theory and research findings relating to siblings placed together or separately, as applied to the children in the particular case (p.193). This suggests that the purpose and function of this type of questioning was to enable specific judicial evaluations of the SW assessment(s) and decision-making underpinning the recommendation to separate siblings in the particular case. In other words, it is likely that this particular type of judicial questioning is aiming to evaluate what ‘weight’ should be given to this particular aspect of the LASW evidence (Ward 2006). In general terms, for this evaluation to be effective, acquaintance with and Technical Connoisseurship in relation to the relevant (specialised) areas of SW knowledge and practice would be required. The use of discursive questions in Case 2 may have reflected the judge’s individual professional style, as suggested by LASW2 in her interview. Alternatively, the judge may have been expressing or developing a particular personal or professional interest in the issue in question. In the latter case, unless the judicial questioning was prompted by mis-trust of the witness (which did not appear to be the case), then it is possible that the judge was seeking to learn from the witness. This could be either to learn about a ‘new’ area of knowledge (new to the judge), or perhaps more likely, to build on and possibly ‘check’ their understanding of the area of knowledge, by using a discursive approach with the LASW witness. In this way, and within what appeared to resemble a professional discussion, the judge was able to gain specific knowledge of the SW theory and research pertinent to the social work recommendation in the case, possibly by using the LASW’s evidence as a kind of ‘tutorial’, thereby supporting their decision-making and judgment. A limitation of the study is the small sample size, and therefore a limited

number of contested cases where judicial questioning of LASW witnesses could be observed. In a larger study of contested cases, it would be possible to explore these ideas further. Nonetheless, for individual LASWs, it is proposed that developing the ability to identify and understanding the types and range of potential judicial questioning within contested care proceedings will contribute to a fuller understanding of the evidential processes and practices for professional witnesses within contested care proceedings. In other words, it will improve LASWs' Interactive Ability and contribute to the realisation of Interactional Expertise (Collins and Evans 2007). This should also assist professional witnesses with their 'backstage' preparation for contested hearings, and should support them to learn from their 'frontstage' experiences of judicial questioning within their oral evidence, with the aim of developing and achieving an effective presentation of an 'expert' professional self (Goffman 1959).

As discussed above, the suggestion that the judiciary should become more knowledgeable about SW practice, theory and research is not new. Although the study could not include interviews with the judges in the sample cases for ethical reasons, data from judicial focus groups, and observations of court hearings, suggest some additional areas for further enquiry, which could inform professional development and training for lawyers and the judiciary. From this study, it can be suggested that purposeful and specific socialisation in the language, practices and knowledge base of LASW practitioners and LA decision makers could improve judicial acquaintanceship with SW and enhance Technical Connoisseurship in evaluating LASW evidence, in the same way that socialisation in legal processes is recommended for LASWs to promote Interactional Ability. The key issue from this study is that there should be an improved focus on a 'two-way' socialisation approach to professional development between lawyers, judges and LASWs, reflecting the communication and evaluation of LASW

evidence as a dynamic, social process (Collins and Evans 2007). Possible reasons why this has not been achieved already within existing mechanisms are discussed in relation to system and structural issues, and specifically interactions between law and social work, later in this chapter.

## **10.2 Features of social work expertise prior to and during care proceedings:**

This section focusses on three main themes from the data, with consideration of what can be learnt from the study in relation to SW and legal practice prior to and during care proceedings.

### **10.2.1 ‘Having the court in mind’ as a feature of expertise in LASW evidence: the importance of understanding the adversarial system**

All professionals in the study identified that ‘having the court in mind’ in relation to awareness of legal requirements and expectations was an essential feature of expertise in professional witnesses. Process-related expectations of LASWs’ written evidence, such as use of the SWET and the inclusion of a *Re B-S* ‘balancing exercise’, were widely understood, and LASWs’ compliance with these requirements was acknowledged across the professional groups. However, from some legal and judicial perspectives this compliance had resulted in a rather ‘formulaic’ approach to the presentation of LASW written evidence (p.169; p.237). This is discussed further at p.307.

One of the challenges to ‘having the court in mind’ raised by LASWs, their managers and LA legal teams was perceived variation in approach between judges, in apparently similar cases (p.157). Experience of inconsistencies in judicial and legal evaluations of

LASWs' written evidence created difficulties for LASWs, their managers, and the LA legal team, in anticipating whether and in what ways their written evidence might be challenged, and how they might be cross-examined in contested cases. This may also be complicated by different levels of scrutiny of written evidence in non-contested and contested proceedings, within the adversarial legal process (Welbourne 2016 provides a discussion of the adversarial system in care proceedings, from a SW perspective). In uncontested proceedings, which are the majority of cases, the lawyers' focus will generally be on case management and progressing negotiations between the LA and the other parties towards an agreed position, and a plan for the child/ren that their client can agree. Whilst the judge's role in uncontested proceedings should not be a 'rubber stamp' of agreement between the parties, it is likely that there will be less judicial scrutiny than if the case were contested, particularly given the time and resource pressures on the family court and judicial caseloads (Masson and Dickens 2019). In relation to legal evaluations of LASWs' evidence, in uncontested cases it is not necessary for the lawyers to search within the written evidence for points to use in cross-examination 'against' the LASW witness. Consequently, lawyers will not actively challenge the LASW written evidence, particularly if matters are agreed, and (as discussed previously) LASWs may not get any feedback from the lawyers, the CG or the magistrates/judge as to the quality of their written evidence. Thus a potential risk for LASWs (and SW managers) whose only or main experience is of uncontested care proceedings, is that they assume that the type of written evidence that has been accepted in previous uncontested cases, will 'stand up' to challenge in contested cases. In contested proceedings, lawyers opposing the LA application will closely scrutinise the LASW's written evidence for potential lines of cross-examination, to support their client's case and/or to discredit the LASW witness, with a view to undermining the LA

case. The lawyers for the other parties are required to put their client's case, regardless of its strength and merits, or their evaluation of the quality of the LASW evidence. As such, the lawyers' approach in cross-examination may or may not relate to a legal evaluation of flawed social work practice or poor communication within LASW evidence; rather they may be seeking to undermine a 'good' LA case and 'good' LASW evidence, to pursue their client's case. This creates an additional issue for LASWs in relation to 'having the court in mind', which is that the evidential processes within a contested final hearing includes the potential for a particular approach to cross-examination. In this scenario a lawyer (acting on instructions to discredit a witness) will focus on minor issues within the LASW evidence (see Ellison 2001 for an explanation of this relating to cross-examination of vulnerable witnesses). These issues reflect features of the adversarial system in care proceedings, which LASWs and their managers need to be aware of, if they are to prepare adequately for contested proceedings.

There were examples of this type of approach to cross-examination in the data (Cases 1 and 4), highlighting the influence of adversarial processes and practices on the experiences of LASWs giving oral evidence. The aim of this type of approach is to undermine testimony, regardless of the importance of the cross-examination point to the overall case, and also perhaps regardless of the actual quality of the evidence. In Case 1, LASW1 described that she had not expected there to be a close focus in cross-examination on the widely-used LA risk assessment tool that she had used to assess the father in the case. However, the unfortunate inclusion of a statistically-based risk factor (gender) in her written evidence provided the father's advocate with the opportunity, albeit unsuccessfully in the end, to focus on this arguably minor point in cross-examination (p.194). LASW1 had not previously experienced attempts in cross-



examination to undermine the overall credibility and reliability of a professional witness's opinion and recommendation. Due to a lack of experience, LASW1 did not anticipate the extent of the scrutiny of her written evidence for a contested hearing, and the in-house processes of evaluation by her manager and her legal team had not highlighted this for her. This approach to cross-examination may be a potentially risky strategy for a lawyer, as it provides an opportunity for a witness to respond well and demonstrate expertise (as observed in the case of LASW1). However, if the lawyer's client has a very weak case, then this risk may be justified as it enables the lawyer to be seen (by their client) to be putting forward a strong attack on the LASW evidence, even if the eventual outcome of the case is decided against the client. It is very difficult for witnesses to prepare for this scenario, other than to be aware that it might occur. If LASWs are inexperienced in contested hearings as was the case in this study in Cases 1, 3 and 4, then they are potentially at a disadvantage in preparing for oral evidence and cross-examination. There may also be weaknesses in the 'in house' preparation processes for contested hearings, particularly if LA solicitors routinely engage independent barristers for contested hearings. This potentially places the LA 'in house' legal team, and thereby the LASW witness, at a disadvantage when compared with barristers and judges as 'repeat players' in contested care proceedings (Galanter 1974).

All of the LASWs in the study expressed feelings of nervousness prior to giving oral evidence in contested hearings; this is discussed further below. Additionally, and linked to 'having the court in mind', the LASWs' were generally wary about including theory and research in their written evidence, due to the risk of being cross examined on the underpinning knowledge base for their assessments and recommendations, if the matter became contested (p.191). In the study, only LASW2 included explicit reference to theory and research in her initial and final evidence, the latter documents being

prepared in the knowledge that the case would be contested. LASW2 was an experienced LASW, including in contested care proceedings and giving oral evidence. As discussed previously, the judge asked LASW2 ‘discursive’ questions about the knowledge and research underpinning her recommendations during her oral evidence, and the ensuing discussion between the judge and LASW2 appeared to indicate that the judge was interacting with LASW2 as a witness with, in Collins and Evans’ terms, Interactional Expertise. The reluctance by the other LASWs in the study, to include appropriate articulation of the underpinning knowledge base for their analysis and recommendations could be due to a lack of Reflective Ability about the theory and research they have applied in practice. It could also be due to a lack of ability or confidence to articulate the underpinning knowledge base effectively for a legal audience (Interactional Ability), a lack of time to prepare and construct succinct written evidence, or a combination of these, and possibly other factors. However, such reluctance limits opportunities for LASWs to perform and communicate a readily recognised feature of domain-specific professional expertise (Fook et al 2000), thereby limiting the communication of SW expertise within care proceedings. An additional effect of this may be to limit opportunities for legal professionals to become more acquainted with and socialised in aspects of SW theory and research that are applied in practice and in particular cases. This may impact on their ability to develop Technical Connoisseurship, in relation to evaluating LASW evidence as effectively as they otherwise might.

Overall, the data highlighted that ‘having the court in mind’ when preparing written evidence and preparing for court hearings requires LASWs and other professional witnesses to have more than a ‘generic’ awareness of legal process and procedural requirements, and that specific knowledge of and experience in contested as well as

uncontested hearings is important. This highlights the importance, in Collins and Evans' terms, of LASWs (and SW managers) developing Reflective Ability and Interactive Ability about the specific and different evidential processes and practices in uncontested and contested proceedings, within an adversarial system. This could be achieved by LASWs seeking and acquiring socialisation in the legal practices and evidential processes within contested hearings. Direct experience, supported by reflection and learning from experience is clearly the ideal way to achieve this (or, less ideally, observation of another LASW giving oral evidence) however, as discussed previously, it is not easy to predict whether and on what basis a case might be or become contested. As only a minority of cases are contested, it may be that more explicit consideration needs to be given to this issue within LA 'in house' preparation processes in individual cases, as well as in the development of 'virtual' and other training resources. Improving Reflective Ability and Interactional Ability to include an understanding of the specific issues resulting from an adversarial system, should help to avoid assumptions that prior experience of legal and judicial evaluations of LASW evidence within uncontested proceedings will translate to contested cases. This should promote a more informed approach to the preparation and 'in house' evaluation of LASW written evidence where the LASW (regardless of their length of experience as a social worker) has little or no prior experience of contested hearings, as well as supporting more effectively the development of Interactional Expertise in LASWs as professional witnesses.

### **10.2.2 ‘Knowing’ the family as a feature of expertise in LASW evidence: relationships and/or evidence gathering?**

Across the professional groups, participants in the study identified that LASW written and oral evidence that demonstrated ‘knowing the family’ was a key indicator of expertise in LASWs being professional witnesses in care proceedings. This might appear to be obvious, especially for LASWs whose role under the Children Act 1989 is to engage with families to assess for support needs as well as to safeguard in situations where children may be harmed by their parents or carers. However, the data raised questions about what ‘knowing the family’ may mean to different professional groups in care proceedings. In particular, the data highlighted questions about the expectations of lawyers and judges in relation LASWs knowing *about* families for the purposes of constructing evidence for legal proceedings, and whether these expectations were or could be aligned with social work values related to working with families (SWE 2019). Similarly, questions are raised about whether legal and judicial expectations are compatible with relationship-based approaches to social work practice, insofar as these are or can be applied in child protection social work (see, for example, Turney 2012; Featherstone et al 2014; Featherstone et al 2018).

The judiciary in the study were clear that they linked LASW witness reliability and credibility with evidence ‘anchored’ in assessments that demonstrated a deep knowledge about the family members, their circumstances and experiences; indicating that the LASWs had spent time assessing the family (or they had made meaningful attempts to do so) (p.173). However, ‘Knowing the family’ as expressed in LASW written evidence within the study, might comprise information gathered *about* the family, their circumstances and particularly their responses to SW assessments undertaken or attempted. It is possible that the LASW written evidence was constructed

in this way, specifically to support the care proceedings application, without necessarily reflecting the approach taken in practice with families by the LASWs. However, it is also possible that the legal requirements and judicial expectations of LASW written evidence influence and affect SW practice with families, through requirements for evidence to comply with legally determined content and format within the SWET. This may result in the LASW gathering information from and about families, to formulate the social work assessment and decision-making in order to meet the requirements of the legal process, without engaging fully with family members' own understanding of their situation; in other words, an instrumental approach to relationships with families (Broadhurst et al 2010). In this way, LASWs may be engaging with families prior to and during care proceedings as a 'means to an end', the end being to satisfy the court and the legal decision maker as to the merits of the application. In practice, this may mean a SW focus with families prior to and during care proceedings on 'evidence gathering' for potential or actual legal proceedings (Dickens and Masson 2016) (arguably another effect of 'juridification' as discussed previously, p.75). This is a rather limited and individualised way of 'knowing' a family within SW practice, and arguably impedes relationship or values-based approaches to social work with families. The LASWs in the study acknowledged these influences on their practice. For example, LASW3 expressed concern about the effect of mandatory timescales within the PLO, along with the requirement to focus the content of the SWET on the evidence to support the application. In LASW3's view this introduced challenges in trying to maintain a values - based approach with parents during assessments, and created tensions between providing succinct, balanced information about parents, and presenting a 'strong enough' case to support the application (p.204).

‘Knowing the family’ was considered an important feature of expertise in LASW witnesses by lawyers, judges and SW professionals in the study. This was closely linked in the data with a desire amongst the lawyers and judges for LASWs to be confident, and to demonstrate balance and compassion in their evidence. These were also considered to be features of expertise and indicators of reliability and credibility in professional witnesses. The discussion of these features continues below.

### **10.2.3 Caring in care proceedings: confidence, compassion and balance as features of expertise in LASW evidence**

For the judges, LASWs being ‘confident’ in their written and oral evidence was an important factor in their evaluation of the LASW as a credible and reliable professional witness (p.171). This related to clarity of expression and being willing to ‘defend’ or ‘concede’ points when challenged in cross-examination. However, the judges also specified that an overly confident witness was not likely to promote a positive impression (p.179). In relation to the LASWs’ ‘performance’ in the witness box, the judges commented on emotional responses to being cross-examined, describing it as uncomfortable to observe if the LASWs ‘crumbled’ during their oral evidence (p.179). These issues illustrate the ‘line’ that LASWs must tread as witnesses, in relation to impression management (Goffman 1959) when striving for a positive judicial evaluation. In other words, LASWs should try to maintain emotional containment (avoid ‘crumbling’), whilst appearing confident (without being ‘bombastic’).

The magistrates’ focus group expressed a shared view about the value they placed on a caring, compassionate approach by LASWs, as demonstrated within their written evidence. This indicated to them that they were evaluating the evidence of a ‘good’ LASW, whose professional opinion they could rely on (p.173). This desire for a

compassionate approach in evidence was also reflected in the data from the CJs, in relation to LASWs demonstrating balance and, if appropriate, sadness for families (p.180). It is well recognised that there is emotional labour involved in professional work (Hochschild 1983), including in SW (for example Leeson 2010; Grootegoed and Smith 2018) and being a judge (for example Roach Anleu and Mack 2005, 2013 and 2019; Roach Anleu et al 2015). A key aspect of emotional labour is the containment of one's own and/or others' feelings within a professional role and/or setting. The data reflect this, indicating that to achieve a positive judicial evaluation, LASWs should demonstrate and express empathy and compassion for families within their written and oral evidence, whilst also containing their emotions during cross-examination. This links with ideas of 'professional' presentation and performance (Hochschild 1983), in relation to impression management and the presentation of a 'professional' self (Goffman 1959).

All the lawyers, magistrates and judges identified that a 'balanced' approach (in relation to the parents in the case) was a key indicator for them of witness expertise, reliability and credibility. It was clear that 'balance' in this context meant LASW witnesses being fair and reasonable in representing the positives as well as the negatives of assessments with families, in their written and oral evidence. Linked with compassion, what was expected and desired in a LASW witness was some demonstration of empathy for the parents' situation, including sensitivity to the feelings of the parents within written evidence and during oral evidence, often illustrated by the choice of language in explaining and justifying the proposed care plan (p.250). It is not surprising that 'balance' is a feature of professional witness expertise within a legal process, given that fairness and reasonableness are established elements of a 'just' legal process, reflecting fundamental legal principles of 'natural justice' and procedural fairness (see Galligan

1996 for a fuller discussion). As discussed in Chapter 2, procedural fairness in relation to care proceedings is addressed within the Family Procedure Rules (FPR 2010), which set out the range of provisions and procedures to be followed, within the ‘over-riding objective’ of ‘enabling the court to deal with cases justly, having regard to any welfare issues involved’ (Rule 1.1, FPR 2010).

The written judgments provided in three of the sample cases provided overall judicial evaluations of the LASWs witnesses in the study. In Case 3, the judgment inferred that LASW3’s approach was thorough and balanced, but overall, the specific judicial evaluation of LASW3 as a witness was brief. This may have been influenced by there being an independent expert report from a psychologist in the case, whose recommendations in relation to the mother were aligned with those of the LASW. In contrast, in Case 1, the judgment contained detailed, positive indicators of LASW1’s reliability and credibility as a witness. There was no additional independent expert evidence in this case (other than an initial capacity assessment of the mother that led to the instruction of the Official Solicitor), and as such the judge was reliant on the evidence of LASW1 and the CG for their decision. The detailed judicial evaluation of LASW1 as a witness was overwhelmingly positive (p.274).

The problems that LASW4 faced in cross-examination have been discussed. At the final hearing, the barrister for the mother submitted to the court that the decision making and evidence of LASW4 was flawed, explicitly challenging LASW4’s reliability and credibility as a professional witness and inviting the court to refuse the LA’s application. In the written judgment, the judge avoided making a finding as to whether LASW4’s practice and evidence was flawed (p.273). Comparing the criticism of LASW4 with the indicators of reliability and credibility identified in relation to LASW1, there was nothing to suggest that LASW4 lacked diligence or



conscientiousness in her work. Therefore, the key deficit in her written and oral evidence was a lack of ‘balance’ in relation to the mother in the case, suggesting (unsurprisingly) that a balanced approach in written and oral evidence is a fundamental requirement in a professional witness, to achieve a positive judicial evaluation.

Overall, a summary of desired features of expertise in a LASW witness (from judicial perspectives) can be derived from the data, indicating approaches to the communication and presentation of LASW written and oral evidence that are likely to promote positive judicial evaluations of witness credibility and reliability.

In written and oral evidence:

- thoroughness (the required social work tasks and processes have been completed),
- focus (limiting evidence to information required for the legal decision)
- balance (fairness, acknowledging positives),
- clarity of expression (‘explaining’ the social work recommendation and ‘advising’ the court),
- empathy and compassion (acknowledging family members’ distress and the effects of the proceedings).

In oral evidence:

- confidence (either standing firm or conceding appropriately in the face of challenge),
- emotional containment (presentation of a ‘professional self’ within the legal process).

These features provide some clear indicators of aspects of presentation and performance that LASWs should aim for in oral evidence, in relation to impression management (Goffman 1959), and Interactional Expertise (Collins and Evans 2007) in order to optimise the likelihood of achieving a positive judicial evaluation.

### **10.3 Structural and system influences and drivers affecting communication and evaluation of LASWs' evidence in care proceedings**

This final discussion section considers what can be learnt from the data about how structural and system influences and causal mechanisms affect the practice and experiences of LASWs, lawyers and judges within contemporary care proceedings.

#### **10.3.1 The effects of 'disruptive judgements' on professional practice and experiences in care proceedings**

Masson (2017) introduced the term 'disruptive judgement' to describe the impact and effects of notable cases on professional and legal practice, using *Re B-S* as a case study. There are other judgments that can also be classified as 'disruptive' in relation to social work practice outside of care proceedings (for example, *Re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112, in relation to parental consent to s20 accommodation under the CA 1989). However, *Re B-S* remains a key judgment in relation to considering system influences on the presentation and evaluation of LASW evidence in proceedings.

As discussed in Chapters 2 and 3, between June and September 2013, apparently contradictory, high-level judicial evaluations of LASW expertise in care proceedings were widely disseminated amongst legal and social work professionals. In the 2<sup>nd</sup>

‘*View*’ (Munby 2013a), and then via *Re B-S*, the senior judiciary was arguably seeking to re-position LASWs as experts, whilst at the same time seeking to influence SW practice. In this way, the judiciary was asserting dominance of a legalistic approach to the communication of LASW practice and analysis within care proceedings, within a process of juridification (discussed at p.75). Prior to *Re B-S*, and in response to concerns about the impact of a frontloading approach for LAs within the PLO, leaders in the social work sector had developed and were piloting a standardised format for LASW evidence in care proceedings (the SWET). However, following *Re B-S*, the SWET pilot was paused for the template to be revised, to reflect the judicial ‘guidance’ about LA evidence within the *Re B-S* judgement. In designing and introducing the original SWET, it appeared that the leaders within the social work system were seeking proactively to ‘reclaim the territory’ from leaders within the legal system, in relation to the presentation of written social work evidence within care proceedings. The persistence of social work leaders to ensure the introduction of the revised SWET after *Re B-S* may have represented some resistance within the social work system to a process of juridification, driven by the effects and influence of *Re B-S* within wider system changes. However, there were also some clear concessions in the process of re-developing the SWET (it includes a distinct section for the LASW’s ‘*Re B-S* analysis’), whereby the structure and focus of social work analysis within the evidence remained legally prescribed. The re-design and re-introduction of the SWET was one of a number of noticeable effects of *Re B-S* on SW and legal practice across the family justice system (see Masson 2015 and 2017 for discussion of the broader impacts).

Within the data, SW and legal professionals involved in evaluations of LASW evidence expressed views about some unintended consequences of the introduction of the SWET and the *Re B-S* analysis section within it. These included LASWs’ concerns about

needing to ensure they were '*Re B-S* compliant' within their written evidence, and CGs' concerns that LASWs were 'hamstrung by templates', leading to the emergence of what was viewed as a 'formulaic' approach within LASW written evidence (p.163). There were some contradictions in the data from the judiciary, who on the one hand welcomed consistency in the content and format of written evidence, but then criticised it as being 'formulaic' (p.169). The CGs and lawyers in the study considered that the influence of this standardisation in LASW written evidence had been to limit the quality of LASW practice and evidence, particularly in relation to the thinking behind and the presentation of specific analysis of options for individual children (p.238). It seems therefore that despite (or perhaps because of) requirements for LASWs to present evidence within a standardised social work template, containing a specific '*Re B-S*' legal balancing exercise as directed by the senior judiciary, there was still an apparent failure to achieve the impression of expertise, from the perspectives of legal and SW 'evaluators' within some care proceedings. Thus, the influence of the 'disruptive' judgment in *Re B-S* on system-wide changes, driven by both legal and SW leaders to improve the presentation of LASW written evidence, may not have achieved the desired effects in practice. This echoes the unintended outcomes and failures of other child protection system changes introduced previously, that have attempted to remedy concerns about practice by introducing various forms of standardisation (see for example, White et al 2009; Broadhurst et al 2010; White et al 2010; Munro 2011b). It is also arguably an example of the combined failures of the SW sector's approach to improvements via standardisation and the legal sector's approach to improvements via juridification (see Ponnert and Johansson 2018 for further discussion of this combination, in relation to child protection social work).

### **10.3.2 The influence of system reviews and reforms on professional practice and experiences in care proceedings**

In addition to individual cases such as *Re B-S*, system reviews, public inquiries and reforms in relation to child protection SW have been ongoing for decades, due to persistent concerns about perceived deficiencies in SW practice and decision-making (section 3.2.3, p.66). Legal system reviews and reforms in care proceedings also have a long history, often concerned with reducing delay (viewed as costly and detrimental to children and families), and focussed on addressing perceived deficits in the practice of LASWs prior to and during proceedings (section 2.4.3, p.45). Of particular relevance here are the structural and system changes to legal rules and primary legislation that were introduced following the Family Justice Review (MoJ 2011b), to reduce the numbers of independent expert witnesses in care proceedings, which were considered to be a significant contributory factor to delay. At the same time, the FJR also identified an embedded and persistent lack of ‘trust’ in relation to LASWs and their practice prior to and during care proceedings. Despite this, it was explicit within the FJR recommendations, in the context of fewer independent experts, that LASWs (along with Children’s Guardians) should be able, and in most cases expected, to provide the professional evidence required for decision-making in care proceedings (MoJ 2011b). Attempts to drive forward these structural changes, were seen in the proactive efforts by the (then) President of the Family Division to re-position LASWs as professional witnesses with recognised expertise. (Munby 2013a).

Within the data, legal and SW professionals identified examples of these competing influences from SW and legal system reforms on their practice and experiences in care proceedings. The changes in statute and the legal rules required the judiciary to adapt their practice, challenging them to rely on SW knowledge about families in most cases,

without recourse to professionals from psychology and psychiatry (or independent social workers) acting as expert witnesses. From the data, it was apparent that the judges in the study had been accustomed to accessing and relying upon expertise from independent expert witnesses. They expressed reservations about whether LASWs would be able to provide the expertise they *desired* for their legal decision-making and provide them with the same ‘firm foundation’ of expertise upon which to reach a judgement (p.171). It was clear that the judges had developed a general confidence in the evidence of independent experts (such as psychologists) as opposed to LASWs, particularly in relation to assessment of ‘attachments’, suggesting a perceived hierarchy of disciplinary expertise within care proceedings (also discussed in Churchill et al 2018). This links to earlier discussions of hierarchies of professions (p.55) and research about the use of independent experts in care proceedings (Brophy et al 2013).

In general, the LA social work and legal services managers identified system reforms as a welcome development, which could restore a more positive profile of LASWs, provide an opportunity for LASWs to become respected professional witnesses within care proceedings, and ‘reclaim’ their professional expertise, in line with the Munro Review recommendations (Munro 2011b). However, they also expressed a view that legal system changes to improve perceptions of social workers as experts were more likely to reflect a pragmatic attempt to change this aspect of the ‘culture’ in care proceedings, in order to make system-wide savings in relation to the cost of independent experts (p.159). One SW manager highlighted that the long-standing and persistent lack of trust in SW expertise meant that there would also be a need for LASW to rebuild confidence as professional witnesses over time, and they remained unconvinced that a system-wide shift towards LASWs being perceived as experts could be achieved (p.159).

Unfortunately, it appears that despite considerable efforts (over many years) to work effectively together to improve practice, legal and SW professionals continue to experience and express dissatisfaction in relation to their interactions in care proceedings, along with growing concern about the capacity and ability within both systems to meet ‘demand’. This is despite the introduction (in some areas) of innovations such as Family Drug and Alcohol Courts (FDAC), which heralded new ways of working in care proceedings, by adjusting the adversarial court processes to reflect a ‘problem solving’ approach within judicial case management and decision-making, based on ideas within therapeutic jurisprudence and an integrated, multi-disciplinary approach (Welbourne 2016). Although evaluations of FDACs were positive (Harwin et al 2014; DfE 2017a), the impact of political austerity on funding within local authorities and the family justice system meant that FDACs were not rolled out as planned.

The problem of managing ‘demand’ within the family justice system has arguably overtaken other issues as a focus for system review and reform (Harwin et al 2018). The numbers of care proceedings applications increased significantly during the period of the study, and researchers, commentators, sector leaders and the judiciary began to highlight that the family justice system was at or near ‘breaking point’ (Munby 2016). The Care Crisis Review was initiated in response, to provide a sector-led review of national increases in the numbers of looked after children and applications for care orders and to explore concerns about the ongoing and worsening ‘crisis’ in care proceedings (FRG 2018; Thomas 2018). The Review emphasised the cumulative impacts of increasing poverty due to government austerity policies, and significantly reduced government funding for LA services, particularly in already disadvantaged areas and/or communities. A range of research studies link these factors with increasing

numbers of referrals into children's social care, child protection plans and care proceedings applications (see, for example, Bilson and Martin 2017; Bywaters et al 2018). In addition to concerns about overall numbers and capacity, the Care Crisis Review highlighted inconsistencies between local authorities and courts in relation to the numbers of care proceedings applications and the numbers of children and young people in local authority care (also highlighted in research, Harwin et al 2018).

At the time of writing, an inter-disciplinary (albeit judicially led) Public Law Working Group is ongoing, working to identify areas for reform within public law proceedings. The interim report of this group (MoJ 2019) identifies 57 draft core recommendations, 16 draft longer-term recommendations and a series of draft 'best practice guidance' appendices. In relation to evaluations of LASW expertise, that the report contains the following (draft) recommendation:

**Recommendation 41: Experts: a shift in culture and a renewed focus on social workers and CGs.** There should be shift in culture and practice away from early instruction within proceedings of experts. Social workers and CGs are expected to have the expertise to make professional judgments and assessments generally but particularly, in relation to the assessment of sibling and parental relationships/bonds and commenting upon attachments. (MoJ 2019:162)

The inclusion of this recommendation within the report suggests that previous attempts by the senior judiciary to 're-position' LASWs as experts within care proceedings (Munby 2013a) have not been fully achieved, or sustained. This is discussed further in relation to the interaction between the legal and SW systems, in section 10.3.3 (p.313), below. The recommendation also links back to the earlier discussion about judicial



evaluations of LASW written evidence, in relation to family relationships and ‘attachments’ (p.288).

It is of note that the majority of the recommendations in the interim report relate to identified areas for improvement in LASW practice prior to and during proceedings. There are recommendations in relation to judicial case management and the operation of the courts, but overall the focus is on LAs and LASWs, including further amendments to the SWET, and a ‘standardised’ format for a pre-proceedings assessment plan, to be agreed between LASWs and family members (MoJ 2019).

Arguably, processes of juridification and standardisation in relation to LASW evidence in care proceedings, which were identified in the data and discussed earlier (p.307), have not been successful in achieving the effects desired by the judiciary, despite the aim being to ‘improve’ LASW practice and evidence for the benefit of the legal process. It must be questioned therefore, whether the current attempts (at the time of writing) via the Public Law Working Group, to shape SW practice with reference to the legal process in care proceedings will be any more successful, particularly in reducing legal dissatisfaction, than previous efforts. This also raises a question about the persistence of this approach, whereby ‘remedying’ SW practice prior to and during care proceedings is seen as the main and continuing solution to problems within the legal system. This is discussed further in the next section.

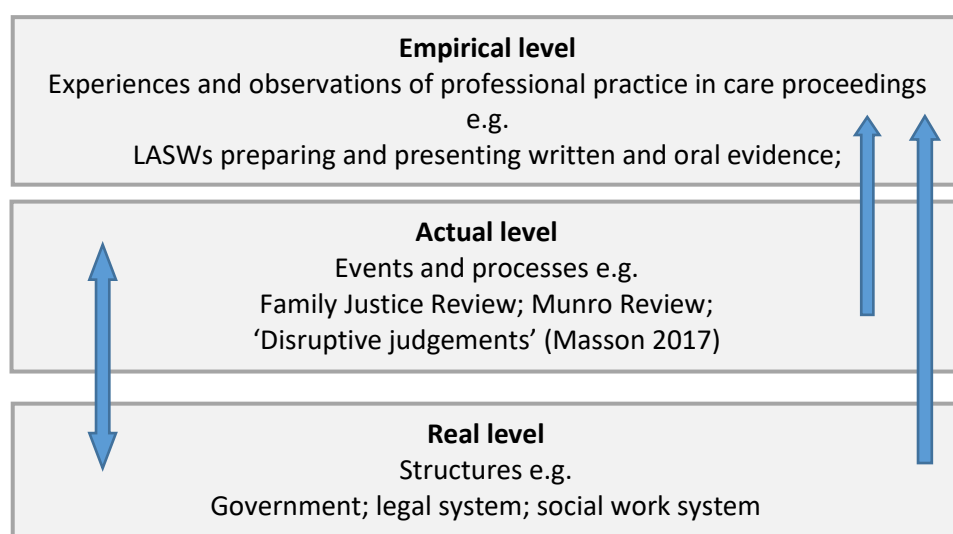
### 10.3.3 Interaction and interference between the structures and systems of law and social work: influences on professional practice and experiences in care proceedings

Data analysis within the study incorporated a critical realist approach to qualitative social research, which includes consideration of causal mechanisms. These can be described as:

...social conditions [that] cause trends to appear as they do. (Fletcher 2017: 189).

Retroductive analysis was used to consider how causal mechanisms and generative tendencies within social structures and systems (law and SW) in ‘Actual’ and ‘Real’ levels may affect professional practice and experiences (specifically evaluations of LASW expertise) within care proceedings, in the ‘Empirical’ level. The figure below illustrates how a critical realist ontology was applied within the study, with the arrows indicating the ‘direction’ of causal mechanisms within the levels.

**Figure 10.1: Critical Realism ‘levels’ as applied in the data analysis**



In addition to considering causal mechanisms between ‘levels’, data analysis focused on how systems of law and SW interact and sometimes interfere with each other, resulting in a range of (sometimes conflicting) influences on practice. This has been discussed above with reference to ‘disruptive’ judgements and system reviews and reforms.

The SW managers in the study made reference to their experiences of structural influences, demonstrating an awareness of conflicting interactions between system-level attempts to re-position LASWs as experts within the legal process, whilst at the same time criticising their profession in widely disseminated judgments such as *Re B-S* (p.159). The LASWs highlighted tensions and competing demands between their preferred approach to SW practice with children and families, based in SW values and relationships, and the demands of the care proceedings process (particularly in relation to timescales), which they felt prevented them from working in the way they ‘should’ (p.205). One LASW commented that having to finalise recommendations about permanence for children within contracted court timescales, prevented her from supporting some families to make required changes, resulting in the permanent removal of children, when they otherwise might have been able to be supported to remain with their family. The LASW commented that this was ‘not what she came into social work to do’ (p.205). These pressures in practice have also been highlighted in reverse, with increased numbers of ‘care orders at home’ as final disposals in care proceedings (DfE 2016; Masson and Dickens 2019), indicating tensions and a lack of (judicial) confidence in LASWs’ reunification care plans, in the context of reduced timescales for proceedings. These issues illustrate how structural and system changes that aim to benefit the overall legal process in relation to cost and capacity, may cause negative effects and unintended consequences for SW systems and processes, for judicial decision-making, and for the children and families in care proceedings.

Within the child protection system, contemporary critiques have also identified the failure of sequential reviews and reforms to resolve perceived problems within the system, including a failure to improve the experiences of the families involved (FRG 2018). An example of proposed whole system reform is provided by Featherstone et al (2018), who consider that a more humane, ‘relationships’-based approach with families should replace the current child protection system. This would extend the potentially individualised nature of existing ‘relationship’-based working (Ruch et al 2018), which tends to focus on the relationship between the professional and the service user. In addition to values-based relationships between professionals and family members, Featherstone et al (2018) also acknowledge the importance of family connections with locality and environment, the impacts of social disadvantage, valuing and incorporating into child protection practice the range of social relationships experienced by children and families. In child protection SW, this would involve a significant ‘shift’ in thinking and practice, away from the established, individualised and welfare-based approach, towards a community orientation and a rights-based approach to working with all family members. Although such wholesale reforms to the overall child protection system are not currently planned, some LAs (as part of government funded local innovation programmes) have adopted whole system approaches such as ‘restorative practice’. These so-called innovations (many are based on well-established ways of working in SW) aim to restore a focus on ‘supportive challenge’ as part of preventive work with families, and endorse relationship-based approaches, including in child protection social work (see, for example, DfE 2017b; Sen and Webb 2019). These (and other) approaches suggest alternatives to the way child protection social work is currently prescribed in statutory guidance such as ‘Working Together to Safeguard Children’ (DfE 2018a) and ‘Court orders and pre-proceedings for local authorities’

(DfE 2014b), which focus on standardised processes for assessment, information gathering and the construction of ‘evidence’, particularly if care proceedings are a possibility. It is therefore interesting to consider whether and (if so) how innovative, more humane and relationships-based approaches in social work such as these could be aligned with the existing and predominantly welfare-based (as opposed to rights-based) child protection legal framework (as reflected in the Children Act 1989 and the accompanying rules and statutory guidance).

As discussed previously (p.97), law may be described as a type of autopoietic system (King and Piper 1995), which is self-referential, requiring other disciplines engaging with it to adapt and succumb to its processes. Care proceedings are by necessity interdisciplinary, with the status of the LA as the ‘applicant’ and the role of the judge as ‘adjudicator’ defining the relative position of each within the legal process. It is therefore inevitable (and reasonable) within care proceedings, that LASW evidence (and LASW expertise) is evaluated from a legal perspective. The fact that evaluations of LASW expertise in care proceedings take place within the legal domain, means there is a tendency towards effects where law is dominant (law ‘on top’, as described by Dickens 2008, discussed at p.97). This in turn results in the shaping of LASW practice and evidence to make it more ‘law-like’, and thereby easier for lawyers and judges to assess in written evidence and challenge in cross-examination, in contested cases. In this process, lawyers and judges are not required to improve their understanding of SW and LASW. Rather, the onus is on LASWs to produce, communicate and present written evidence that enables ‘easier’ evaluation from a legal perspective. Whilst this is obviously beneficial for the legal process, it creates and sustains interactions between the systems of law and social work, which are based on juridification as the preferred remedy for legal dissatisfaction with LASW practice and evidence. This is reflected in

the data and (as discussed in the previous section) in the current (draft) interim proposals from the Public Law Working Group (MoJ 2019).

## **10.4 Conclusion**

### **10.4.1 Relevance of the study**

The study design was developed between 2012 and 2015, in the period following the Munro Review of Child Protection (Munro 2011b) and the Family Justice Review (MoJ 2011b). These reviews included active consideration (and critique) of the role of LASWs in child protection social work, and in care proceedings. As previously discussed, the recommendations from these parallel reviews appeared to suggest a possible, positive reformulation of LASWs as professionals with expertise. This offered opportunities for the profession to counter prevailing, negative social and political characterisations of LASWs within child protection social work, and to redress the apparent de-skilling of LASWs as professional witnesses in care proceedings, where instruction of independent expert witnesses to supplement and/or challenge LASW evidence had become commonplace. The identification of SW ‘expertise’ as a key concept within these system reviews provided a focus within the study, to explore understandings of professional expertise from SW and legal perspectives. It was also important to try to disentangle the types of expertise(s) involved in communicating and evaluating professional information and opinion, in the form of LASW evidence. The research questions aimed to enable investigation of the views, experiences and practice of LASWs, lawyers and judges in care proceedings, focussing on the how LASW evidence (and expertise) was communicated and evaluated. Additionally, the study

aimed to explore how social, structural, system and process drivers might be influencing the practice, experiences and views of professionals involved in the communication and evaluation of evidence in care proceedings, reflecting the critical realist framework underpinning the research methodology as explained in Chapter 4 (section 4.2.2).

During the period of development of the study design, there were efforts by the senior judiciary to re-position LASWs as experts in care proceedings (Munby 2013a), and legal reforms that introduced limits on the instruction of independent experts in care proceedings (Children and Families Act 2014 s.13(6)). This increased the importance of LASWs' (and CGs') evidence in proceedings, especially in cases where no additional experts were instructed. Therefore, the study is relevant in considering how LASW expertise is communicated and evaluated in contemporary care proceedings, within these changed processes. The study also explores how LASWs, their managers, lawyers and judges have experienced the system and process changes affecting LASW evidence generally, and in individual cases. This includes consideration of the practices and 'expertises' that are involved in effective communication and evaluation of LASW evidence in contemporary care proceedings, and what support SW and legal professionals might need or benefit from, to promote effective professional practice.

Legal decision-making in care proceedings can have profound impacts (both negatively and positively) on children's and adults' family lives. The role of the LASW as professional witness on behalf of the LA can be highly influential within both SW and legal processes. It is six years since the introduction of legal changes to reduce the numbers of additional independent expert witnesses in care proceedings. However, debates and legal deliberations about the extent and limits of LASW expertise continue and remain an active consideration in individual cases (see, for example, *Re AV (Expert*

*Report*) [2020] EWCA Civ 346). As such, this study remains relevant and provides a contribution to knowledge in this area, which it is hoped will assist with SW and legal professional and practice development, to improve care proceedings for the benefit of the families involved.

#### **10.4.2 Contribution to knowledge**

The methodology for the study enabled a multi-layered analysis of the empirical data within a critical realist framework. Danermark et al (2019: 117) explain:

‘Social reality consists of structures and internally related objects containing causally operating properties. Knowledge of this social reality can only be attained if we go beyond what is empirically observable by asking questions about and developing concepts of the more fundamental, transfactually structured conditions for the events and phenomena under study.’

The analysis considered social conditions, deriving from changes within SW and legal social systems and structures that might be influencing the data, and affecting the communication and evaluation of LASW evidence in care proceedings, reflecting tensions between the systems of child protection SW and family law. These influences included the impacts of an adversarial system on practice and processes in care proceedings, the influence of professional hierarchies (reflecting and reinforcing negative perceptions of LASWs), the effects of ‘disruptive’ judgments (Masson 2017) on social work and legal practice, and attempts to ‘shape’ SW practice, for the benefit of the legal process, via processes of juridification. The insights from this analysis offer the potential for an improved understanding of how SW and legal systems operate, interact and sometimes interfere with each other. This could inform system and

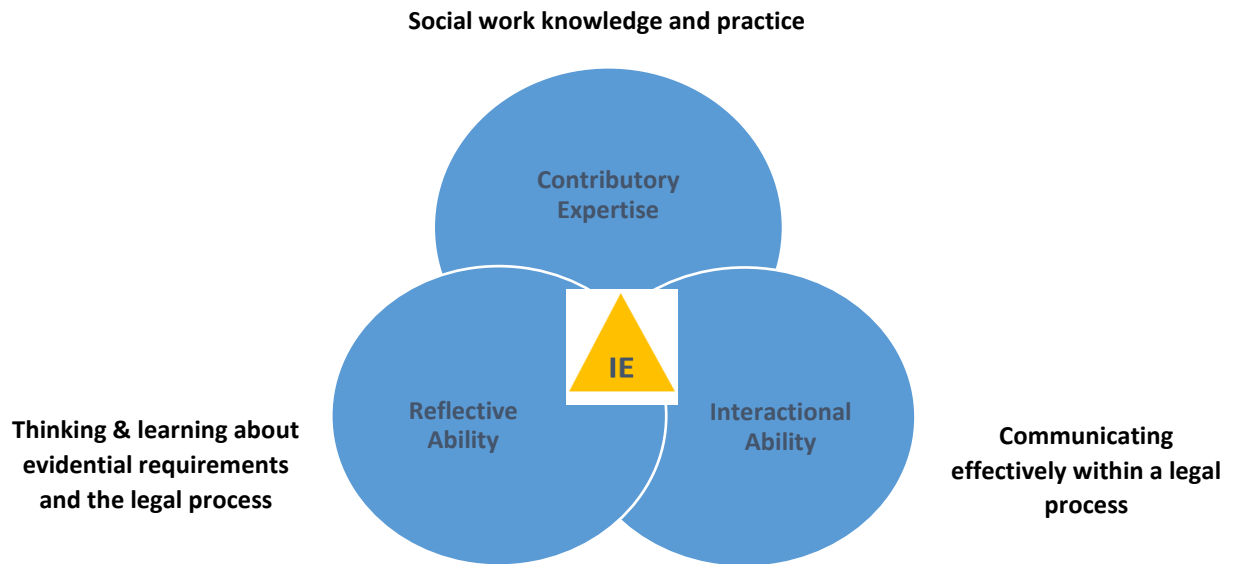


structural review and reform processes, potentially avoiding a repetitive ‘re-hashing’ of changes to existing ways of working in care proceedings, which is apparent in current approaches to system reform (MoJ 2019).

At an empirical level, the ethnographic methods used with the sample of ‘live’ cases enabled a focus on the practices and experiences of legal and SW professionals within contested hearings. Abductive analysis was used to generate theoretical re-description of the data, applying Collins and Evans (2007) theory of expertises and Goffman’s (1959) dramaturgical theory of presentation of self and impression management. These theoretical frameworks enable a novel analysis of the inter-disciplinary, social processes involved in care proceedings. In particular, there is consideration of the social processes involved in communication and evaluation of expertise across and between the disciplinary boundaries of SW and law, LASWs’ ‘performance’ in oral evidence, and an exploration of issues for LASWs in cross-examination by lawyers and judicial questioning within contested hearings. The methods used enabled a specific and direct focus on the contemporary role and experiences of LASWs in care proceedings, which is a perspective that has been under-represented in other research in this field, as well as a focus on experiences and practices of lawyers and judges evaluating LASWs as professional witnesses.

Key insights from the analysis for SW professionals relate to the need for LASWs to achieve Interactional Expertise (expertise as a professional witness), via effective and specific socialisation in the language and practices of care proceedings, and in particular contested hearings, in order to enable effective (expert) communication of their domain-specific expertise within the legal process. This is differentiated from expertise in SW practice (as illustrated in Figure 10.2 below).

**Figure 10.2 Interactional Expertise (IE) – LASWs as professional witnesses in care proceedings** (using Collins and Evans, 2007)



The application of Collins and Evans’ framework to the data also highlights that lawyers and judges require ‘Technical Connoisseurship’ in order to ensure effective and reliable evaluations of LASW expertise. This requires socialisation to the level of ‘acquaintanceship’ with the SW domain, achieved by an appropriate level of familiarisation with SW knowledge and practice. Preliminary insights from the study, suggest that reliance on ‘superficial’ levels of knowledge, for example in relation to ‘attachments’, may lead to flawed interpretations within legal proceedings and judicial decision-making practice, which could have negative consequences for children and families. The findings from the study (and other studies considering the knowledge requirements of the judiciary, for example Churchill 2018), suggest that identifying the ‘appropriate’ level (type and depth) of familiarisation with SW knowledge and practice that lawyers and judges need, is not straightforward.

Collins and Evans' (2007) theory enables a nuanced understanding of the interactions between LASWs and legal professionals in care proceedings, at least in relation to the processes involved in the communication and evaluation of LASW written and oral evidence and expertise. Analysis of the data in relation to system-level interactions between law and SW indicated that law tends to exert dominance over SW as a discipline (leading to processes of juridification). In contrast, Collins and Evans' framework does not signify one domain as dominant over the other; rather the specific roles of each are identified, within a dynamic social process of communication and evaluation. It appears that existing approaches to 'court skills' training, and to supporting the judiciary to acquire relevant knowledge about SW are lacking, as indicated by ongoing dissatisfaction with and efforts to adjust and improve practice. The analysis indicates a need for a more informed and balanced, two-way 'socialisation' of domain-specific knowledge and practices between social work and law. In relation to LASWs, it should not be assumed that experience and expertise in SW practice will translate to expertise as a professional witness, and there is a need for LASWs and their managers to become better socialised in the practices and requirements of contested hearings, to improve practice in care proceedings overall. This is challenging, given that contested hearings are in the minority, however it was clear from the data that a lack of understanding of these processes caused difficulties for LASW witnesses, even though a 'poor' performance did not necessarily affect the outcome of the case.

In relation to lawyers and judges, an improved approach to socialisation in the language and practices of SW could focus specifically on improving judicial and legal understanding of how LASWs approach their work with families, and how they and their managers apply knowledge in decision-making. In the same way that effective

socialisation for LASWs involves ‘exposure’ to the language and practices of the legal process and the courtroom, it would be beneficial for judges to experience the environments within which LASWs practice, and the processes within which SW decision making takes place. It is uncommon for judges to ‘shadow’ LASWs and/or SW managers, but this should be considered within training and professional development for the family judiciary. Such suggestions may be considered aspirational in the context of the significant pressures of time and resources within SW and legal systems, however it is possible that such an approach could support and promote better judicial evaluations of LASW evidence in care proceedings, which would be of benefit overall.

#### **10.4.3 Limitations of the study**

The main limitation within the study is the sample size for the ethnographic elements of the research design in Phase 2, as discussed in Chapter 4 (p.136). Whilst it must be acknowledged that the sample size is a significant limitation, the research design included two Phases to provide contextual and case-specific data from the study area, using a range of methods. These included: interviews and focus groups with a range of professional groups; researcher observations of LA decision-making processes; researcher observations of pre- and post-hearing discussions between professionals; researcher observations of court hearings, including the contested hearings; post-hearing interviews with the LASW and lawyers for the parties in each case; analysis of the LASW written evidence; and analysis of each judgment. This combination of methods within the research design enabled triangulation of data from various stages of the LA and court processes, and from a range of professional perspectives, thus strengthening the findings (Moran-Ellis et al 2006).

In retrospect, it would have been preferable to include interviews with each of the Children's Guardians in the sample cases, given their key role in evaluating LASW evidence. This is explained in Chapter 4 (p.137). Perhaps more significantly, the data highlight the key role that LASWs' managers have (or should have) in supporting LASWs in the preparation of written evidence, in providing in house evaluations, and in supporting LASWs to prepare appropriately for oral evidence in contested cases. This study focussed on LASWs as professional witnesses in care proceedings, however it is clear from the data that further consideration of the role of the LASW's manager within care proceedings would be appropriate and potentially beneficial.

#### **10.4.4 Final reflections**

The focus of this study has been the LASW as a professional witness within care proceedings, and so it is appropriate to conclude with an acknowledgment of the expectations placed on LASWs in care proceedings, from both SW and legal perspectives:

It's hard isn't it, we expect them to be everything - social workers who work with families, do fantastic written work, and be brilliant witnesses. I can't think of another job where you have to cover such wide areas of expertise. (Legal Services Manager LA1)

A question remaining from the study is: how important (to the outcome of care proceedings) is it for a LASW to give evidence 'expertly'? The LASWs in the study all expressed nervousness about their role, predominantly linked to a desire to 'do well' (for themselves and for their employer), so the court would grant the LA's application, and the LASW could deliver their desired outcome for the children concerned. The

LASWs were concerned that a poor performance could mean that the court would not grant the LA application, and that the children concerned would be left ‘unprotected’ as a result. However, an example from the data indicated that an apparently ‘poor’ performance as a LASW witness, both in written and oral evidence, did not necessarily lead to the LA application being refused (p.273). In this case, there was an additional, independent expert witness, whose recommendations were aligned with the LA application, and so the judge was able to rely on this evidence in granting the application, and within the judgement. It is possible that a larger sample might have provided examples where there was ‘poor’ LASW evidence, without additional expert evidence (other than the CG’s), and where the implications of a poor LASW witness performance on judicial decision-making might have been more apparent.

An area for further research was also highlighted in relation to the interactions between judges and LASW witnesses in contested care proceedings. The small sample size and lack of post-hearing interviews with judges only allows for a tentative categorisation of the types of judicial questions put to the LASWs. It may assist LASWs to prepare for contested hearings for this to be explored further, to improve LASWs’ understanding of judicial approaches in contested hearings, thereby supporting the development of LASWs as professional witnesses with, in Collins and Evans’ terms, Interactional Expertise.

The ongoing ‘crisis’ in care proceedings means it is clearly important that care proceedings research should focus on improving the experiences of and outcomes for the children, parents and family members involved (Broadhurst et al 2018). From this study, it is also suggested that the development of LASWs’ expertise as professional witnesses, combined with developing and supporting judicial expertise in the evaluation of LASW evidence, is of crucial importance in enabling effective and appropriate legal

decision-making. This matters, because in care proceedings, the stakes are so high for the children and the families involved.

## BIBLIOGRAPHY

- Ackroyd, S. (2016) Sociological and organisational theories of professions and professionalism, in Dent, M., Bourgeault, I. L., Denis, J and Kuhlmann, E. (Eds) *The Routledge Companion to the Professions and Professionalism*, London: Routledge
- ADCS (Association of Directors of Children's Services) (2016) *Social Work Evidence Template (SWET)* <https://adcs.org.uk/care/article/SWET>
- Albrecht, T. L, Johnson, G. M and Walther, J. B (1993) Understanding communication processes in focus groups, in: Morgan, D. L (Ed) *Successful Focus Groups: Advancing the State of the Art*, London: Sage
- Aldridge, M. (1996) Dragged to Market: Being a Profession in the Postmodern World, in: *British Journal of Social Work* 26: 177-194
- Alvesson, M. and Sköldbberg, K. (2009) *Reflexive Methodology – New Vistas for Qualitative Research, Second Edition*; London: Sage Publications
- Archer, M., Bhaskar, R., Collier, A., Lawson, T. and Norrie, A. (Editors) (1998) *Critical Realism: Essential Readings*, Oxon: Routledge
- Atkinson, P., and Morriss, L. (2017) On Ethnographic Knowledge, in *Qualitative Inquiry* 23(5): 323–331
- Austin, D. M. (1983) The Flexner Myth and the History of Social Work, in *Social Service Review* 57 (3): 357-377
- Baer, W.C. (1986) Expertise and Professional Standards, in *Work and Occupations*, 13: 532
- Baker, S.E. and Edwards, R. (2012) *How many qualitative interviews is enough? Expert voices and early career reflections on sampling and cases in qualitative research*; National Centre for Research Methods Review Paper (NCRM), Economic and Social Research Council (ESRC) [http://eprints.ncrm.ac.uk/2273/4/how\\_many\\_interviews.pdf](http://eprints.ncrm.ac.uk/2273/4/how_many_interviews.pdf)
- Bamford, T. (2015) *A Contemporary History of Social Work: Learning from the past*, Bristol: Policy Press



Banakar, R. and Travers, M. (2005) *Theory and Method in Socio-Legal Research*; Oxford: Hart Publishing

Barnard, A. (2008) Values, ethics and professionalization: a social work history in: Barnard, A., Horner, H. and Wild, J. (Eds) *The Value base of Social Work and Social Care: An Active Learning Handbook*, Maidenhead: Open University Press

BASW (British Association of Social Workers) (2018a) Professional Capabilities Framework for Social Work in England: The 2018 Refreshed PCF: Level Descriptors for all Domains

<https://www.basw.co.uk/system/files/resources/BASW%20PCF.%20Detailed%20level%20descriptors%20for%20all%20domains.25.6.18%20final.pdf>

BASW (British Association of Social Workers) (2018b) Regulation of Social Work and Social Workers in the United Kingdom

<https://www.basw.co.uk/system/files/resources/Social%20Work%20Regulation%20-%20Contexts%20and%20Questions.pdf>

Bates P. and Brophy J. (1996) *The appliance of science? The use of experts in care proceedings: a court-based study*. Report to the Department of Health.

Beckett, C. McKeigue, B. and Taylor, H. (2007) Coming to conclusions: social workers' perceptions of the decision making process in care proceedings; in *Child and Family Social Work* 12: 54-63

Beckett, C., Dickens, J. and Bailey, S. (2013) *Evaluation of the Triborough Care Proceedings Pilot: Report for the Triborough Care Proceedings Steering Group*, University of East Anglia: Centre for Research on Children and Families

Beckett C, and Dickens J. (2018) Making a target work: Messages from a pilot of the 6-month time limit on care proceedings in England, in *Child and Family Social Work* 23: 390–398

Berger, R. (2015) Now I see it, now I don't: researcher's position and reflexivity in qualitative research, in *Qualitative Research* 15 (2): 219–234

- Bhaskar, R. (1998) Philosophy and scientific realism, in M. Archer, R. Bhaskar, A. Collier, T. Lawson, and A. Norrie (Editors), *Critical realism: Essential readings*, London: Routledge.
- Bhaskar, R. (2008) *A Realist theory of Science*, Oxon: Routledge
- Bilson, A. and Martin, K. E. C. (2017) Referrals and Child Protection in England: One in Five Children Referred to Children's Services and One in Nineteen Investigated before the Age of Five in *British Journal of Social Work* 47: 793–811
- Blix, S. B. and Wettergen, A. (2015) The emotional labour of gaining and maintaining access to the field, in *Qualitative Research* 15 (6): 688–704
- Boon, A. (2005) The Formalisation of Research Ethics; in Banakar, R. and Travers, M. *Theory and Method in Socio-Legal Research*; Oxford: Hart Publishing
- Boon, A., Flood, J. and Webb, J. (2005) Postmodern Professions? The Fragmentation of Legal Education and the Legal Profession in: *Journal of Law and Society* 32 (3): 473-492
- Booth, Dame Margaret DBE. (1996). *Avoiding delay in Children Act cases*. London: Lord Chancellor's Department.
- Bourdieu, P. (1987) The Force of Law: Toward a Sociology of the Juridical Field, in *Hastings Law Journal*, 38 (5): 814-854
- Boyatzis, R. E. (1998) *Transforming Qualitative Information: Thematic Analysis and Code Development*, London: Sage
- Brent Borough Council (1985) *A Child in Trust: the Report of the Panel of Inquiry into the circumstances surrounding the death of Jasmine Beckford*, Presented to Brent Borough Council and to Brent Health Authority by members of the Panel of Inquiry, London: Borough of Brent
- Brewer, J. D. (2000) *Ethnography*, Buckingham: Open University Press
- Broadhurst K, Grover C and Jamieson J (Editors); (2009) *Critical Perspectives on Safeguarding Children*; Chichester: Wiley-Blackwell

Broadhurst, K. and Holt, K. (2010) Partnership and the limits of procedure: prospects for relationships between parents and professionals under the new Public Law Outline, in *Child and Family Social Work* 15 (1): 97-106

Broadhurst, K., Hall, C., Wastell, D. E., White, S. and Pithouse, A. (2010) Risk, Instrumentalism and the Humane Project in Social Work: Identifying the Informal Logics of Risk Management in Children's Statutory Services, in *British Journal of Social Work* 40: 1046–1064

Broadhurst K and Holt K (2012) *Involving the Family Court Advisor in Pre-proceedings practice – Initial lessons from the Coventry and Warwickshire pilot*; Family Law Week [www.familylawweek.co.uk/site.aspx?i=ed97110](http://www.familylawweek.co.uk/site.aspx?i=ed97110)

Broadhurst, K., Shaw, M., Kershaw, S., Harwin, J., Alrouh, B., Mason, C. and Pilling, M. (2015a) Vulnerable birth mothers and repeat losses of infants to public care: is targeted reproductive health care ethically defensible? in *Journal of Social Welfare and Family Law* 37 (1): 84-98

Broadhurst, K., Alrouh, B., Yeend, E., Harwin, J., Shaw, M., Pilling, M., Mason, C. and Kershaw, S. (2015b) Connecting Events in Time to Identify a Hidden Population: Birth Mothers and Their Children in Recurrent Care Proceedings in England, in *British Journal of Social Work* 45: 2241–2260

Broadhurst, K., Mason, C., Bedston, S., Alrouh, B., Morriss, L., McQuerrrie, T., Palmer, M., Shaw, M., Harwin, H. and Kershaw, S. (2017) *Vulnerable Birth Mothers in Recurrent Care Proceedings: Final Main Report*. Lancaster: University of Lancaster. Centre for Child and Family Justice Research. [http://wp.lancs.ac.uk/recurrent-care/files/2017/10/mrc\\_final\\_main\\_report\\_v1.0.pdf](http://wp.lancs.ac.uk/recurrent-care/files/2017/10/mrc_final_main_report_v1.0.pdf)

Broadhurst, K., Budd, T. and Williams, T. (2018) *The Nuffield Family Justice Observatory for England and Wales: Making it happen*, Nuffield Foundation: London.

Brophy, J and Bates, P (1998) 'The position of parents using experts in care proceedings: A failure of partnership?' in *Journal of Social Welfare and Family Law* 20 (1): 23 – 48

Brophy, J. (2006) *Research Review: Child Care Proceedings under the Children Act 1989*. Department for Constitutional Affairs, DCA Researching Series 5/06. Oxford: Oxford Centre for Family Law and Policy, University of Oxford

Brophy, J. Sidaway, J. Jhutti-Johal, J. Owen, C. (2013) *Neither fear nor favour, affection or ill-will: modernisation of care proceedings and the use and value of independent social work expertise to senior judges*, Oxford Centre for Family Law and Policy, University of Oxford

Bryman, A. (2012) *Social Research Methods 4<sup>th</sup> Edition*; Oxford University Press

BSA (British Sociological Association) (2017) *Statement of Ethical Practice*  
[https://www.britisoc.co.uk/media/24310/bsa\\_statement\\_of\\_ethical\\_practice.pdf](https://www.britisoc.co.uk/media/24310/bsa_statement_of_ethical_practice.pdf)

Buchanan, B.G., Davis, R., Skith, R. G and Feigenbaum, E. A. (2018) Expert Systems: A Perspective from Computer Science, in Ericsson, K.A., Hoffman, R. R., Kozbelt, A. and Williams, A.M. (Eds) (2018) *The Cambridge Handbook of Expertise and Expert Performance 2nd Edition*; Cambridge University Press

Bunt, S. (2018) Critical realism and grounded theory: Analysing the adoption outcomes for disabled children using the retrodution framework, in *Qualitative Social Work* 17 (2): 176–194

Butler-Sloss, Elizabeth, Dame; Great Britain. DHSS (Department of Health and Social Security) (1988) *Report of the inquiry into child abuse in Cleveland 1987: presented to Parliament by the Secretary of State for Social Services*, London: HMSO

Bywaters, P., Brady, G., Bunting, L., Daniel, B., Featherstone, B., Jones, C., Morris, K., Scourfield, J., Sparks, T. and Webb, C. (2018) Inequalities in child welfare under austerity: a universal challenge, in *Child and Family Social Work* 23: 53-61.

Carson, J. (2018) ‘Every expression is watched’: Mind, medical expertise and display in the nineteenth-century English courtroom, in *Social Studies of Science* 48 (6): 891–918

Caudill, D. S., Conley, S. N., Gorman, M. E. and Weinell, M (Editors) (2019) *The Third Wave in Science and Technology Studies: Future Research Directions on Expertise and Experience*, Palgrave Macmillan

Chaemsaitong, K. (2012) Performing self on the witness stand: Stance and relational work in expert witness testimony, in *Discourse and Society* 23(5) 465–486

Children Act Advisory Committee (1997) *Final Report 1997*. London: Lord Chancellor's Department

Churchill, H., Morris, K. and Richardson-Foster, H. (2018) *Exploring the lessons from dissemination of research to the judiciary involved in public family law and child care proceedings*, University of Sheffield

[https://www.sheffield.ac.uk/polopoly\\_fs/1.773593!/file/Child-welfare-research-dissemination-and-the-judiciary-Final-Report-April-2018.pdf](https://www.sheffield.ac.uk/polopoly_fs/1.773593!/file/Child-welfare-research-dissemination-and-the-judiciary-Final-Report-April-2018.pdf)

CJI (Centre for Justice Innovation) (2019) *A welcome boost for Family Drug and Alcohol Courts* <https://justiceinnovation.org/articles/welcome-boost-family-drug-and-alcohol-courts>

Clark, T. (2010) Gaining and Maintaining Access: Exploring the Mechanisms that Support and Challenge the Relationship between Gatekeepers and Researchers, in *Qualitative Social Work* 10 (4): 485–502

Clifford, D and Williams, G (2002) 'Important Yet Ignored: problems of 'Expertise' in Emergency Duty Social Work' in *British Journal of Social Work* 32: 201 – 215

Collier, A. (1994) *Critical realism: an introduction to Roy Bhaskar's philosophy*; London: Verso

Collins, H. (2007) A new programme of research? in *Studies in History and Philosophy of Science* 38: 615–620

Collins, H. and Evans, R. (2007) *Rethinking Expertise*, London: The University of Chicago Press

Collins, H. and Evans, R. (2015) Expertise revisited, Part I - Interactional expertise, in *Studies in History and Philosophy of Science* 54: 113-123

Collins, H. and Evans, R. (2016) The Bearing of Studies of Expertise and Experience on Ethnography, in *Qualitative Inquiry* 1-7

Collins, H., Evans, R. and Weinel, M. (2016) Expertise revisited, Part II: Contributory expertise, in *Studies in History and Philosophy of Science* 56: 103 -110

Community Care (2013) *Social workers to get tool to improve care applications*  
<https://www.communitycare.co.uk/2013/07/05/social-workers-to-get-tool-to-improve-care-applications/>

Coopmans C and Button G (2014) Eyeballing expertise, in *Social Studies of Science* 44 (5): 758–785

Corbin Dwyer, S. and Buckle, J. L. (2009) The Space Between: On Being an Insider-Outsider in Qualitative Research, in *International Journal of Qualitative Methods* 8 (1): 54-63

Crotty, M. (1998) *The Foundations of Social research: Meaning and perspective in the research process*, London: Sage

Danermark, B., Ekström, M., and Karlsson, J. C. (2019) *Explaining Society: Critical Realism in the Social Sciences 2<sup>nd</sup> Edition*, London: Routledge

Davies, C. and Ward, H. (2012) *Safeguarding Children Across Services: Messages From Research*: Jessica Kingsley Publishers

Davidson-Arad, B. and Benbenbishty, R. (2016) Child Welfare Attitudes, Risk Assessments and Intervention Recommendations: The Role of Professional Expertise, in *British Journal of Social Work* 46 (1): 186–203,

Davis, A (2008) *Celebrating 100 years of Social Work*, University of Birmingham  
<https://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/IASS/100-years-of-social-work.pdf>

DCA (Department for Constitutional Affairs) (2005). *Judicial review team, thematic review of the protocol for judicial case management in public law children act cases*. Judicial Resources Review.

DCA (Department for Constitutional Affairs) (2006). *Review of the child care proceedings system in England and Wales*. London: The Stationery Office.

DCSF (Department for Children Schools and Families) (2008) *Children Act 1989 Guidance and Regulations Volume 1: Court Orders*  
<http://media.education.gov.uk/assets/files/pdf/c/children%20act%201989%20guidance%20and%20regulations.pdf>

DCSF (Department for Children Schools and Families) (2009a) *The Protection of Children in England: action plan The Government's response to Lord Laming*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/327238/The\\_protection\\_of\\_children\\_in\\_England\\_-\\_action\\_plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/327238/The_protection_of_children_in_England_-_action_plan.pdf)

DCSF (Department for Children Schools and Families) (2009b) *Building a safe, confident future: The final report of the Social Work Task Force*  
<http://data.parliament.uk/DepositedPapers/Files/DEP2009-2987/DEP2009-2987.pdf>

Dencik, L., Hintz, A., Redden, J. and Warne, H. (2018) *Data Scores as Governance: Investigating uses of citizen scoring in public services: Project Report*, Data Justice Lab, Cardiff University, UK <https://datajustice.files.wordpress.com/2018/12/data-scores-as-governance-project-report2.pdf>

Dennis, I. (2010) *The Law of Evidence 4<sup>th</sup> Edition*; London: Sweet and Maxwell

Denzin, N. K., and Lincoln, Y. S. (Editors.) (2005) *The Sage handbook of qualitative research (3rd ed.)* Sage Publications Ltd.

DfE (Department for Education) (2014a) *Making the education of social workers consistently effective: Report of Sir Martin Narey's independent review of the education of children's social workers*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/287756/Making\\_the\\_education\\_of\\_social\\_workers\\_consistently\\_effective.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287756/Making_the_education_of_social_workers_consistently_effective.pdf)

DfE (Department for Education) (2014b) *Court orders and pre-proceedings for local authorities*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/306282/Statutory\\_guidance\\_on\\_court\\_orders\\_and\\_pre-proceedings.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306282/Statutory_guidance_on_court_orders_and_pre-proceedings.pdf)

DfE (Department for Education) (2016) *Impact of the Family Justice Reforms: phase 3 – exploring variation across 21 local authorities. Research report*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/544444/Impact\\_of\\_the\\_Family\\_Justice\\_Reforms\\_phase\\_3\\_-\\_exploring\\_variation\\_across\\_21\\_local\\_authorities\\_research\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/544444/Impact_of_the_Family_Justice_Reforms_phase_3_-_exploring_variation_across_21_local_authorities_research_report.pdf)

[\\_data/file/534875/Impact of the Family Justice Reforms Exploring variation across LAs - f...pdf](#)

DfE (Department for Education) (2017a) *Family Drug and Alcohol Court National Unit: independent evaluation: Research report*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/597476/Tavistock\\_family\\_drug\\_and\\_alcohol\\_court\\_national\\_unit\\_evaluation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597476/Tavistock_family_drug_and_alcohol_court_national_unit_evaluation.pdf)

DfE (Department for Education) (2017b) *Leeds Family Valued: Evaluation report*

[https://dera.ioe.ac.uk/29566/1/Leeds\\_Family\\_Valued\\_-\\_Evaluation\\_report.pdf](https://dera.ioe.ac.uk/29566/1/Leeds_Family_Valued_-_Evaluation_report.pdf)

DfE (Department for Education) (2018a) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779401/Working\\_Together\\_to\\_Safeguard-Children.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779401/Working_Together_to_Safeguard-Children.pdf)

DfE (Department for Education) (2018b) *Knowledge and skills statement for child and family practitioners* [https://www.basw.co.uk/system/files/resources/basw\\_90824-6.pdf](https://www.basw.co.uk/system/files/resources/basw_90824-6.pdf)

DfE (Department for Education) (2018c) Consultation on improvement standards for child and family social workers: Government consultation response

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691584/Improvement\\_standards\\_for\\_child\\_and\\_family\\_social\\_workers-response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691584/Improvement_standards_for_child_and_family_social_workers-response.pdf)

DfE (Department for Education) (2019a) *Experimental statistics: Children and family social work workforce in England, year ending 30 September*

2018 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/782154/Children\\_s\\_social\\_work\\_workforce\\_2018\\_text.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782154/Children_s_social_work_workforce_2018_text.pdf)

DfE (Department for Education) (2019b) *Longitudinal study of local authority child and family social workers (Wave 1): Research report*

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/826965/LongCAF\\_Wave1\\_report\\_IFF\\_DfE\\_August19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/826965/LongCAF_Wave1_report_IFF_DfE_August19.pdf)

DfE and MoJ (Department for Education and Ministry of Justice) (2012) *The Government Response to the Family Justice Review: A system with children and*



*families at its heart;*

<https://www.education.gov.uk/publications/eOrderingDownload/CM-8273.pdf>

DfE and RiP (Department for Education and Research in Practice) (2015) *Impact of the Family Justice Reforms on Front-line Practice Phase One: The Public Law Outline*, Research in Practice

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/450254/RR478A -](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/450254/RR478A_-_)

[Family\\_justice\\_review\\_the\\_effect\\_on\\_local\\_authorities.pdf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/450254/RR478A_-_Family_justice_review_the_effect_on_local_authorities.pdf.pdf)

DH (Department of Health) (1989) *The Care of Children: Principles and Practice in Regulations and Guidance: The Children Act 1989*, London: HMSO

DH (Department of Health) (1993) *Children Act Report 1992*, London: HMSO

DH (Department of Health) (1995) *The Challenge of Partnership in Child protection: Practice Guide*, London: HMSO

DH (Department of Health) (2001) *The Children Act Now: Messages from Research*, London: The Stationery Office

DH (Department of Health) (2014) *Re-visioning social work education: An independent review (by Professor David Croisedale-Appleby)*

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/285788/DCA\\_Accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/285788/DCA_Accessible.pdf)

Dickens, J (2008) 'Welfare, Law and Managerialism: Inter-discursivity and Inter-professional Practice in Child Care Social Work' in *Journal of Social Work* 8: 45 – 64

Dickens, J. (2013) *Social Work, Law and Ethics*, Oxon: Routledge

Dickens, J. and Masson, J. (2016) The Courts and Child Protection Social Work in England: Tail Wags Dog? in *British Journal of Social Work* 46 (2): 355–371

Dickens, J., Berrick, J., Pösö, T. and Skivenes, M. (2017) Social Workers and Independent Experts in Child Protection Decision Making: Messages from an Intercountry Comparative Study, in *British Journal of Social Work* 47: 1024–1042

- Dickens, J., Masson, J., Garside, L., Young, J. and Bader K. (2019) Courts, care proceedings and outcomes uncertainty: The challenges of achieving and assessing “good outcomes” for children after child protection proceedings, in *Child and Family Social Work* 24: 574–581
- Dingwall, R. and Lewis, P. (Eds) (1983) *The Sociology of the Professions: Lawyers, Doctors and Others*, London: Macmillan press Ltd
- Dominelli, L (2009) Repositioning Social Work in: Adams, R, Dominelli, L and Payne, M (Eds) *Social Work: Themes, Issues and Critical Debates 3<sup>rd</sup> Edition*, Hampshire: Palgrave
- Donzelot, J (1980) *The Policing of Families: Welfare versus the State*, London: Hutchinson
- Doughty, J. Twaite, A. and Magrath, P. (2017) *Transparency through publication of family court judgments. An evaluation of the responses to, and effects of, judicial guidance on publishing family court judgments involving children and young people*, Cardiff University  
<http://orca.cf.ac.uk/99141/1/Transparency%20through%20publication%20of%20family%20court%20judgments%20March%202017.pdf>
- Dreyfus, H.L. and Dreyfus, S.E. (1986) *Mind over machine: The power of human intuition and expertise in the era of the computer*. New York: Free Press
- Drury-Hudson, J. (1999) ‘Decision making in Child Protection: The Use of Theoretical, Empirical and Procedural Knowledge by Novices and Experts and Implications for Fieldwork Placement’ in *British Journal of Social Work* 29: 147 – 169
- Easton, G. (2010) Critical Realism in Case Study Research, in *Industrial Marketing Management* 39: 118–128
- Edmondson, D., Potter, A. and McLaughlin, H. (2013). Reflections of a Higher Specialist PQ Student Group on the Munro Recommendations for Children's Social Workers. *Practice* 25 (3): pp.191-207.

Edwards, P. K., O'Mahoney, J. and Vincent, S. (Editors) (2014) *Studying Organizations Using Critical Realism: A Practical Guide*, Oxford University Press

Eekelar, J. and Maclean, M. (2013) *Family Justice: The Work of Family Judges in Uncertain Times*, Oxford: Hart Publishing

Elder-Vass, D. (2012) *The Reality of Social Construction*, Cambridge University Press

Ellison, L. (2001). The mosaic art: Cross-examination and the vulnerable witness, in *Legal Studies* 21(3): 353-375.

Endsley, M. R. (2018) Expertise and Situation Awareness, in Ericsson, K.A., Hoffman, R. R., Kozbelt, A. and Williams, A.M. (Eds) (2018) *The Cambridge Handbook of Expertise and Expert Performance 2nd Edition*; Cambridge University Press

Ericsson, K.A. and Smith, J. (Editors) (1991) *Toward a general theory of expertise: prospects and limits*, Cambridge University Press

Ericsson, K.A., Krampe, R.T. and Tesch-Romer, C. (1993) The role of deliberate practice in the acquisition of expert performance in *Psychological Review* 100: 363-403

Ericsson, K.A., Hoffman, R. R., Kozbelt, A. and Williams, A.M. (Editors) (2018) *The Cambridge Handbook of Expertise and Expert Performance 2<sup>nd</sup> Edition*; Cambridge University Press

ESRC (Economic and Social Research Council) (2015) *Framework for research ethics* <https://esrc.ukri.org/files/funding/guidance-for-applicants/esrc-framework-for-research-ethics-2015/>

Evetts, J. (2003) The Sociological Analysis of Professionalism: Occupational Change in the Modern World in: *International Sociology* 18: 395-415

Evetts, J. (2011) A new professionalism? Challenges and opportunities in: *Current Sociology* 59: 406-422

Fargion, S. (2006) Thinking Professional Social Work: Expertise and Professional Ideologies in Social Workers' Accounts of Their Practice in *Journal of Social Work* 6: 255

- Fay, B. (1990) Critical realism? in *Journal for the Theory of Social Behaviour* 20 (1): 33-41
- Featherstone, B., Morris, K. and White, S. (2014) A Marriage Made in Hell: Early Intervention Meets Child Protection, in *British Journal of Social Work* 44 (7): 1735–1749
- Featherstone, B., White, S. and Morris, K. (2014) *Re-imagining child protection: Towards humane social work with families*, Bristol: Policy Press
- Featherstone, B., Gupta, A., Morris, K. and White, S. (2018) *Protecting Children: A Social Model*, Bristol: Policy Press
- Ferguson, H. (2011) *Child Protection Practice*; Basingstoke: Palgrave Macmillan
- Fielding, N. G. (2011) Judges and their work, in *Social and Legal Studies*, 20 (1): 97-116
- Fleming, P. Biggart, L. and Beckett, C. (2015) Effects of Professional Experience on Child Maltreatment Risk Assessments: A Comparison of Students and Qualified Social Workers in *British Journal of Social Work Advance* 45 (8): 2298–2316
- Fletcher, A. J. (2017) Applying critical realism in qualitative research: methodology meets method in *International Journal of Social Research Methodology*, 20 (2): 181–194
- Flexner, A. (1915). Is social work a profession? in: *National Conference of Charities and Corrections, Proceedings of the National Conference of Charities and Corrections at the Forty-second annual session held in Baltimore, Maryland, May 12-19, 1915*. Chicago: Hildmann. Reproduced in: *Research on Social Work Practice* 2001 11: 152
- Fook, J. (2012) *Social Work: A Critical Approach (2<sup>nd</sup> Edition)*, London: Sage
- Fook, J. and Gardner, F. (2007) *Practising Critical Reflection: A Resource Handbook*, Maidenhead: Open University Press
- Fook, J., Ryan, M. and Hawkins, L. (1997) ‘Towards a Theory of Social Work Expertise’ in *British Journal of Social Work* 27: 399 – 417

- Fook, J., Ryan, M. and Hawkins, L. (2000) *Professional Expertise: Practice, theory and education for working in uncertainty*, London: Whiting and Birch Ltd
- Fournier, V. (1999) The Appeal to "Professionalism" as a Disciplinary Mechanism, in *The Sociological Review* 47(2): 280–307
- Fox Harding, L. (1997) *Perspectives in Child Care Policy (2nd edition)*, London: Routledge
- Freidson, E. The Theory of Professions: State of the Art, in Dingwall, R. and Lewis, P. (Eds) (1983) *The Sociology of the Professions: Lawyers, Doctors and Others*, London: Macmillan Press Ltd
- Freidson, E. (1994) *Professionalism Reborn: Theory, Prophecy and Policy*, Oxford: Blackwell Publishers
- FRG (Family Right Group) (2018) *Care Crisis Review: options for change*, London: Family Rights Group
- Gaiswinkler, W. and Roessler, M. (2009) Using the expertise of knowing and the expertise of not-knowing to support processes of empowerment in social work practice in *Journal of Social Work Practice: Psychotherapeutic Approaches in Health, Welfare and the Community* 23 (2): 215-227
- Galanter, M. (1974) Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change, in *Law and Society Review* 9 (1): 95-160
- Galligan, D. J. (1996) *Due Process and Fair Procedures: A Study of Administrative Procedures*, Oxford University Press
- Garrett, P.M. (2009) *Transforming Children's Services? Social work, neoliberalism and the 'modern' world*, Maidenhead: Open University Press
- Germain, M. (2012) Traits and skills theories as the nexus between leadership and expertise: reality or fallacy? *Performance Improvement*, Vol. 51, no. 5
- Gilbert, T. and Powell, J. L. (2010) Power and Social Work in the United Kingdom: A Foucauldian Excursion, in *Journal of Social Work* 10 (1): 3–22

- Gillen J. (2002) Achieving Best Practice to Secure the Best Interests of Children, in *Child Care in Practice* 8 (4): 295-304
- Gillingham, P. (2011) Decision-making tools and the development of expertise in child protection practitioners: are we ‘just breeding workers who are good at ticking boxes’? in *Child and Family Social Work* 16: 412–421
- Gobet, F. (2017) Three Views on Expertise: Philosophical Implications for Rationality, Knowledge, Intuition and Education, in *Journal of Philosophy of Education* 51 (3): 605-619
- Goffman, E. (1959) *The Presentation of Self in Everyday Life*, London: Penguin
- Golafshani, N (2003) Understanding Reliability and Validity in Qualitative Research, in: *The Qualitative Report*, 8 (4): 597-607  
<https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1870andcontext=tqr>
- Grootegoed, E. and Smith, M (2018) The Emotional Labour of Austerity: How Social Workers Reflect and Work on Their Feelings towards Reducing Support to Needy Children and Families, in *British Journal of Social Work* 48: 1929–1947
- Gupta, A. and Lloyd-Jones, E. (2016) *Re B-S*: a glass half full? An exploration of the implications of the *Re B-S* judgment on practice in the family courts, in: *Child and Family Social Work* 21: 539–547
- Habermas J. (1987) *The Theory of Communicative Action: Volume Two: Lifeworld and System: A Critique of Functionalist Reason*, Boston: Beacon Press.
- Hammersley, M. and Atkinson, P. (2007) *Ethnography: Principles in Practice*, 3rd edition, London: Routledge
- Hand, L. (1901) Historical and Practical Considerations Regarding Expert Testimony; in *Harvard Law Review* 15: 40-58
- Haringey LSCB (Local Safeguarding Children’s Board) (2009) *Serious Case Review: Baby Peter: Executive Summary*, February 2009 available at:  
[https://www.haringeylscb.org/sites/haringeylscb/files/executive\\_summary\\_peter\\_final.pdf](https://www.haringeylscb.org/sites/haringeylscb/files/executive_summary_peter_final.pdf)

- Harries-Jenkins, G. (1970) Professionals in Organizations, in: Jackson, J. *Professions and Professionalization*, London: Cambridge University Press
- Harris, J. (2008) State Social Work: Constructing the Present from Moments in the Past in: *British Journal of Social Work* 38: 662–679
- Harwin, J., Alrouh, B., Ryan, M. and Tunnard, J. (2014) *Changing Lifestyles, Keeping Children Safe: an evaluation of the first Family Drug and Alcohol Court (FDAC) in care proceedings*. Brunel University. [http://wp.lancs.ac.uk/cfj-fdac/files/2018/04/FDAC\\_May2014\\_FinalReport-V1.1.pdf](http://wp.lancs.ac.uk/cfj-fdac/files/2018/04/FDAC_May2014_FinalReport-V1.1.pdf)
- Harwin, J., Alrouh, B., Bedston, S. and Broadhurst, K. (2018) *Care Demand and Regional Variability in England: 2010/11 to 2016/17*, Centre for Child and Family Justice Research, Lancaster University [http://wp.lancs.ac.uk/cfj/files/2018/03/Care-Demand-Regional-Variability-Report\\_2018.02.21\\_V1.2.pdf](http://wp.lancs.ac.uk/cfj/files/2018/03/Care-Demand-Regional-Variability-Report_2018.02.21_V1.2.pdf)
- Healy, M., and Perry, C. (2000) Comprehensive criteria to judge validity and reliability of qualitative research within the realism paradigm, in *Qualitative Market Research* 3 (3): 118-126
- Healy, K. and Meagher, G. (2004) The Reprofessionalization of Social Work: Collaborative Approaches for Achieving Professional Recognition, *British Journal of Social Work* 34: 243–260
- Heenan, A. and Heenan, S. (2013) Norgrove and after: An overview of the Family Justice Review and the government’s response, in *Journal of Social Welfare and Family Law*, 34:3, 381-394
- Hill, A. (2009) ‘Combining Professional Expertise and Service User Expertise: Negotiating Therapy for Sexually Abused Children’ in *British Journal of Social Work* 39: 261 – 279
- HMCTS (Her Majesty’s Courts and Tribunals Services) (2014) Guidance: Access to courts and tribunals for academic researchers <https://www.gov.uk/guidance/access-to-courts-and-tribunals-for-academic-researchers>

- Hochschild, A.R. (1983) *The Managed Heart: Commercialisation of Human Feeling* Berkeley, CA: University of California Press
- Horwarth, J. (2018) The Assessment Task, in Horwarth, J. and Platt, D. (Editors) *The Child's World: The Essential Guide to Assessing Vulnerable Children, Young People and their Families (Third Edition)*, London: Jessica Kingsley Publishers
- Houston, S. (2010) Prising Open the Black Box – Critical Realism, Action Research and Social Work, in *Qualitative Social Work* 9 (1): 73-91
- Hunt, J. (2010) *Parental Perspectives on Family Justice System in England and Wales: A Review of Research* [www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/FJC/Publications/Parental\\_Perspectives\\_final.pdf](http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/FJC/Publications/Parental_Perspectives_final.pdf).
- Hunt J, Macleod A and Thomas C (1999) *The Last Resort: Child Protection, the Courts and the 1989 Children Act*. London: The Stationery Office.
- Jacobsen, M.H. and Kristiansen, S. (2015) *The Social Thought of Erving Goffman*, Los Angeles: Sage
- James, A. (1992) An Open or Shut Case? Law as an Autopoietic System; in *Journal of Law and Society* 19 (2): 271-83
- Johnson, T. J. (1972) *Professions and Power*, London: Macmillan Press Ltd
- Jones, R. (2010) Children Acts 1948-2008: the drivers for legislative change in England over 60 years in: *Journal of Children's Services* 4 (4): 39-52
- Jones, R. (2014) *The story of Baby P: setting the record straight*, Bristol: The Policy Press
- Keane, A. and McKeown, P. (2012) *The Modern Law of Evidence 9<sup>th</sup> Edition*; Oxford University Press
- Keddell, E. (2019) Algorithmic Justice in Child Protection: Statistical Fairness, Social Justice and the Implications for Practice, in *Social Sciences* 8 (10): 281
- King, M. and Piper, C. (1995) *How the Law Thinks About Children (2<sup>nd</sup> Edition)*, Aldershot: Arena



Kritzer, H. (2007) Toward a theorization of craft, in *Social and Legal Studies* 16: 321-340

Laming, Lord (2003) *The Victoria Climbié Inquiry: Report of an inquiry by Lord Laming*, London TSO

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/273183/5730.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/273183/5730.pdf)

Laming, Lord (2009) *The Protection of Children in England: A Progress Report*, London: HMSO

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328117/The\\_Protection\\_of\\_Children\\_in\\_England.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/328117/The_Protection_of_Children_in_England.pdf)

LCD (Lord Chancellor's Department) (1994) *Children Act Advisory Committee: annual report 1992/93*, London: Lord Chancellor's Department

LCD (Lord Chancellor's Department) (1997a) *Handbook of Best Practice in Children Act Cases*, London: Lord Chancellor's Department

LCD (Lord Chancellor's Department) (1997b) *Children Act Advisory Committee Final Report: June 1997*, London: Lord Chancellor's Department

LCD (Lord Chancellor's Department) (2002) *Scoping Study on Delay in Children Act Cases: Findings and Action Taken*, London: Lord Chancellor's Department

<https://webarchive.nationalarchives.gov.uk/20030415193420/http://www.lcd.gov.uk:80/family/scopestud.htm>

LCD (Lord Chancellor's Department) (2003) *Protocol for Judicial Case Management in Public Law Children Act Cases*, London: Lord Chancellor's Department

Leeson, C. (2010) The emotional labour of caring about looked-after children, in *Child and Family Social Work*, 15: 483–491

Lincoln, Y.S. and Guba, E.G. (1985) *Naturalistic Inquiry*, London: Sage

Macleod, S., Hart, R., Jeffes, J. and Wilkin, A. (2010). *The Impact of the Baby Peter Case on Applications for Care Orders* (LGA Research Report). Slough: NFER.

<https://www.nfer.ac.uk/media/1630/bpi01.pdf>

- Mack, K. and Roach Anleu, S. (2007) Getting through the list: Judgecraft and legitimacy in the lower courts, in *Social and Legal Studies*, 16 (3): 341-362.
- Martin, J. (1993) A Philosophy of Etiquette, in *Proceedings of the American Philosophical Society*, 137 (3): 350-356
- Masson, J. (1992) Implementing Change for Children: Action at the Centre and Local Reaction, in *Journal of Law and Society* 19 (3): 320-338
- Masson, J., Pearce, J. and Bader, K. with Joyner, O., Marsden, J. and Westlake, D. (2008) *Care Profiling Study; Ministry of Justice Research Series (March)*.  
[www.justice.gov.uk/publications/docs/care-profiling-study.pdf](http://www.justice.gov.uk/publications/docs/care-profiling-study.pdf)
- Masson, J. (2010a) A new approach to care proceedings; in *Child and Family Social Work* 15: 369-379
- Masson, J. (2010b), Judging the Children Act 1989: courts and the administration of family justice, *Journal of Children's Services* 5 (2): 52 - 59
- Masson, J. (2010c) *The use of experts in child care proceedings in England and Wales: benefits, costs and controls* [conference paper]  
<http://www.bristol.ac.uk/law/research/researchpublications/2011/alrnc2010masson.pdf>
- Masson, J. (2011) Public child law – a service priority? in *Journal of Social Welfare and Family Law* 33 (4): 361-377
- Masson, J. (2012) I think I do have strategies’: lawyers’ approaches to parent engagement in care proceedings, in *Child and family social work*, 17 (2): 202–211
- Masson, J. and Dickens, J. (2013) *Partnership by Law? The pre-proceedings process for families on the edge of care proceedings*  
<http://www.bristol.ac.uk/law/research/researchpublications/2013/partnershipbylaw.pdf>
- Masson, J. (2014) The quality of care proceedings reform, in *Journal of Social Welfare and Family Law* 36 (1): 82-84

- Masson, J. (2015) Third (or fourth) time lucky for care proceedings reform? In *Child and Family Law Quarterly* 27 (1): 3-23
- Masson, J. (2017) Disruptive Judgments, in *Child and Family Law Quarterly* 29 (4): 401-422
- Mayhew, J. (1999) Theory, practice and the psychology of expertise, in *Social Work Education: The International Journal*, 18(2): 195-206
- McCaul, K. (2011) Understanding Courtroom Communication through Cultural Scripts, in Watgner, A, and Cheng, L. (Editors) *Exploring Courtroom Discourse: The Language of Power and Control*, Farnham: Ashgate
- McEvoy, P. and Richards, D. (2003) Critical realism: a way forward for evaluation research in nursing? in *Journal of Advanced Nursing* 43 (4): 411- 420
- McKeigue, B. and Beckett, C. (2004) Care Proceedings under the 1989 Children Act: Rhetoric and reality, in *British Journal of Social Work* 34 (6): 831-849
- McLaughlin, H. (2009) What's in a Name: 'Client', 'Patient', 'Customer', 'Consumer', 'Expert by Experience', 'Service User'—What's Next? in *British Journal of Social Work* 39: 1101–1117
- McLaughlin, H. (2012) *Understanding Social Work Research 2<sup>nd</sup> edition*, London: Sage
- McLaughlin, H., Potter, A. and Newton, K. (2013) *Evaluation of the Greater Manchester Gatekeeping and Allocation Pilot: Care Proceedings*. Manchester Metropolitan University. ISBN: 978-1-905476-86-2 <https://e-space.mmu.ac.uk/611394/>
- McLaughlin, K., Leigh, J. and Worsley, A. (2016) The State of Regulation in England: From the General Social Care Council to the Health and Care Professions Council, in *British Journal of Social Work* 46 (4): 825–838
- Merighi, J., Ryan, M., Renouf, N. and Healy, B. (2005) 'Reassessing a Theory of Professional Expertise: A Cross-National Investigation of Expert Mental Health Social Workers' in *British Journal of Social Work* 35: 709 – 725

- Meyer, S.B. and Lunnay, B. (2013) *The Application of Abductive and Retroductive Inference for Design and Analysis of Theory-Driven Sociological Research*  
<http://www.socresonline.org.uk/18/1/12.html>
- Mieg, H. A. (2001) *The Social Psychology of Expertise : Case Studies in Research, Professional Domains, and Expert Roles*. Mahwah, N.J.: Psychology Press.
- Mieg, H. A. and Evetts, J. (2018) Professionalism, Science, and Expert Roles: A Social Perspective, in Ericsson, K.A., Hoffman, R. R., Kozbelt, A. and Williams, A.M. (Editors) (2018) *The Cambridge Handbook of Expertise and Expert Performance 2nd Edition*; Cambridge University Press
- MoJ (Ministry of Justice) (2011a) *Family Justice Review: Interim Report*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217357/family-justice-review-interim-rep.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217357/family-justice-review-interim-rep.pdf)
- MoJ (Ministry of Justice) (2011b) *Family Justice Review: Final Report*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217343/family-justice-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf)
- MoJ (Ministry of Justice) (2014) *Action research to explore the implementation and early impacts of the revised Public Law Outline (PLO)*, Ministry of Justice Analytical Series  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/304477/action-research-to-explore-plo-implementation-and-early-impacts.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/304477/action-research-to-explore-plo-implementation-and-early-impacts.pdf)
- MoJ (Ministry of Justice) (2015) *The use of experts in family law. Understanding the processes for commissioning experts and the contribution they make to the family court*, Ministry of Justice Analytical Series  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486770/use-experts-family-law.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486770/use-experts-family-law.pdf)
- MoJ (Ministry of Justice) (2019) *Public law working group: Recommendations to achieve best practice in the child protection and family justice systems: Interim Report*  
<https://www.judiciary.uk/wp-content/uploads/2019/07/Public-Law-Working-Group-Child-Protection-and-Family-Justice-2019-1.pdf>

- MoJ and DfE (Ministry of Justice and Department for Education) (2012) *The Government Response to the Family Justice Review: A system with children and families at its heart*; Cm 8273; Crown Copyright  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/177097/CM-8273.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/177097/CM-8273.pdf)
- Moran-Ellis, J., Alexander, V.D., Cronin, A., Dickinson, M., Fielding, J., Sleney J. and Thomas, H. (2006) Triangulation and integration: processes, claims and implications, in *Qualitative Research 6 (1)*: 45-59
- Morgan, D. L (Ed) (1993) *Successful Focus Groups: Advancing the State of the Art*, London: Sage
- Mosier, K., Fischer, U., Hoffman, R. R. and Klein, G. (2018) Expert professional Judgments and “Naturalistic Decision Making”, in Ericsson, K.A., Hoffman, R. R., Kozbelt, A. and Williams, A.M. (Editors) (2018) *The Cambridge Handbook of Expertise and Expert Performance 2nd Edition*; Cambridge University Press
- Munby, J. (2013a) ‘View from the President’s Chambers (2) The process of reform : the revised PLO and the local authority’ <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/FJC/Publications/VIEW+FROM+THE+PRESIDENT.pdf>
- Munby, J. (2013b) ‘View from the President’s Chambers: the Process of Reform’, *May [2013] Fam Law* 548 – 552
- Munby, J. (2014) *Transparency in the family courts: publication of judgments practice guidance* <https://www.judiciary.uk/wp-content/uploads/2014/01/transparency-in-the-family-courts-jan-2014-1.pdf>
- Munby, J. (2016) ‘View from the President’s Chambers: care cases: the looming crisis’ *[2016] Family Law* 1227
- Munday, R. (2011) *Evidence 6<sup>th</sup> Edition*; Oxford University Press
- Munro, E. (2008) *Effective Child Protection 2nd Edition*, London: Sage

Munro, E. (2010b) *The Munro Review of Child Protection Part One: a Systems Analysis* London: Department for Education  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/624949/TheMunroReview-Part\\_one.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/624949/TheMunroReview-Part_one.pdf)

Munro, E. (2011a) *Interim Report: The Child's Journey* London: Department of Education  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/624946/DFE-00010-2011.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/624946/DFE-00010-2011.pdf)

Munro, E. (2011b) *The Munro review of child protection: Final Report – A child centred system*. London: Department of Education  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175391/Munro-Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/175391/Munro-Review.pdf)

Munro, E. (2012) *The Munro review of child protection: Progress Report - Moving towards a child centred system*. London: Department of Education  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/180861/DFE-00063-2012.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/180861/DFE-00063-2012.pdf)

Mutch, A. (2014) History and Documents in Critical Realism, in Edwards, P. K., O'Mahoney, J. and Vincent, S. (Editors) *Studying Organizations Using Critical Realism: A Practical Guide*, Oxford University Press

Nowell, L.S. Norris, J.M. White, D.E. and Moules, N.J. (2017) Thematic analysis: Striving to Meet the Trustworthiness Criteria, in *International Journal of Qualitative Methods* 16: 1-13

ONS (Office for National Statistics), 23 November 2017; *Domestic abuse in England and Wales: year ending March 2017: A report bringing together statistics to enable more thorough analysis of how domestic abuse is dealt with at the local level within England and Wales*.  
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2017>

- Padgett, D. (2008) *Qualitative Methods in Social Work Research 2nd Edition*; London: Sage
- Parsons, T (1954) *Essays in sociological theory (rev. ed.)*, New York: The Free Press
- Parton, N. (1991) *Governing the family: child care, child protection and the state*, Basingstoke: Palgrave Macmillan
- Parton, N. (1994) ‘‘Problematics of Government’’, (Post) Modernity and Social Work’ in *British Journal of Social Work* 24: 9 – 32
- Parton, N. (2006) *Safeguarding Childhood: early intervention and surveillance in a late modern society* Hampshire: Palgrave Macmillan
- Parton, N. (2008) ‘Changes in the Form of Knowledge in Social Work: From the ‘Social’ to the ‘Informational’?’ in *British Journal of Social Work* 38: 253 – 269
- Parton, N. (2012) The Munro Review of Child Protection: An Appraisal; in *Children and Society* 26: 150-162
- Parton, N. (2014) *The Politics of Child Protection*, Hampshire: Palgrave Macmillan
- Payne, M. (2005) *The Origins of Social Work: Continuity and Change*, Hampshire: Palgrave Macmillan
- Pearce, J., Masson, J. and Bader, K. (2011) *Just following instructions? The representation of parents in care proceedings*, the School of Law, University of Bristol <http://www.bristol.ac.uk/media-library/sites/law/migrated/documents/justfollowinginstructions.pdf>
- Ponnert, L. and Johansson, S. (2018) Juridification and Standardisation: Two Legal Dimensions Influencing Contemporary Child Protection, in *British Journal of Social Work*, 48 (7): 2020–2037
- President of the Family Division (2014) *President’s guidance on allocation and gatekeeping for care, supervision and other proceedings under part iv of the children act 1989 (public law)*. London: President of the Family Division. <https://www.judiciary.uk/wp-content/uploads/2013/03/President%E2%80%99s-Guidance-on-Allocation-and-Gatekeeping.pdf>

Rees, C. and Gatenby, M. (2014) Critical Realism and Ethnography, in Edwards, P. K., O'Mahoney, J. and Vincent, S. (Editors) *Studying Organizations Using Critical Realism: A Practical Guide*, Oxford University Press

Reeves, J., Green, T., Marsden, L. and Shaw, N. (2018) myCourtroom: Rosie's family go to court; the use of simulations in preparing social workers for court, in *Social Work Education*, 37 (2): 234-249

Research in Practice (2015), *Strategic Briefing: social work recruitment and retention*  
<https://www.rip.org.uk/resources/publications/strategic-briefings/social-work-recruitment-and-retention-strategic-briefing-open-access-download-2015/>

Research in Practice (2016) Court orders and pre-proceedings (Templates - SWET)  
[https://coppguidance.rip.org.uk/social-work-evidence-template/#template\\_docsforcourt](https://coppguidance.rip.org.uk/social-work-evidence-template/#template_docsforcourt)

Roach Anleu, S. L., (1992) The professionalization of social work? A case study of three organisational settings, in *Sociology* 26 (1): 23-43

Roach Anleu, S., and Mack, K. (2005) Magistrates' Everyday Work and Emotional Labour, in *Journal of Law and Society* 32 (4): 590-614

Roach Anleu, S., and Mack, K. (2013) Judicial authority and emotion work, in *The Judicial Review*, 11 (3): 329-347.

Roach Anleu, S. Mack, K. and Tutton, J. (2014) Judicial humour in the Australian courtroom, in *Melbourne University Law Review* 38 (2): 621-665

Roach Anleu, S., Bergman Blix, S. and Mack, K. (2015) Researching Emotion in Courts and the Judiciary: A Tale of Two Projects, in *Emotion Review* 7 (2): 145-150

Roach Anleu, S., and Mack, K. (2019) A Sociological Perspective on Emotion Work and Judging. *Oñati Socio-Legal Series [online]* 9 (5): 831-851.  
<http://opo.iisj.net/index.php/osls/article/viewFile/1057/1209>

Roberts, J. M. (2014) Critical Realism, Dialectics and Qualitative Research Methods, in *Journal for the Theory of Social Behaviour* 44 (1): 1-23



- Robertson, L. and Broadhurst K. (2019) Introducing Social Science Evidence in Family Court Decision-Making and Adjudication: Evidence from England and Wales, in *International Journal of Law, Policy and The Family* 33: 181–203
- Rogowski, S. (2010) *Social Work: The Rise and Fall of a Profession?* Bristol: The Policy Press
- Rogowski, S. (2015) From Child Welfare to Child protection/Safeguarding: A Critical Practitioner's View of Changing Conceptions, Policies and Practice, in *Practice* 27 (2): 97-112
- Rowden, E. and Wallace, A. (2019) Performing Expertise: The Design of Audiovisual Links and the Construction of the Remote Expert Witness in Court, in *Social and Legal Studies* 28 (5): 698–718
- Ruch, G., Lees, A. and Pritchard, J. (2014) Getting Beneath the Surface: Scapegoating and the Systems Approach in a Post-Munro World, in *Journal of Social Work Practice*, 28 (3): 313-327
- Ruch, G., Turney, D. and Ward, A. (2018) *Relationship Based Social Work 2<sup>nd</sup> Edition*, London: Jessica Kingsley Publishers
- Russell, J. (2015) Predictive analytics and child protection: Constraints and opportunities, in *Child Abuse and Neglect* 46: 182-189
- Ryan, J.P., Garnier, P., Zyphur, M. and Zhai, F. (2006) Investigating the effects of case-worker characteristics in child welfare in *Children and Youth Services Review*, 28 (9): 993-1006
- Ryder, E. (2019) Decision Making and Justice, in *Family Court Review* 57 (3): 392 - 404
- Selinger, E.M. (2003) Expertise and public ignorance, in *Critical Review: A Journal of Politics and Society* 15 (3-4): 375-386
- Selinger, E., Dreyfus, H. and Collins, H. (2007) Interactional expertise and embodiment, in *Studies in History and Philosophy of Science* 38: 722–740
- Selinger, E. M. (2008) Feyerabend's democratic critique of expertise, in *Critical Review: A Journal of Politics and Society* 15 (3-4) 359-373,

Sen, R. and Webb, C. (2019) Exploring the declining rates of state social work intervention in an English local authority using Family Group Conferences, in *Children and Youth Services Review* 106: 104458

Shemmings, D. (2016) *A quick guide to attachment theory*  
<https://www.theguardian.com/social-care-network/2016/feb/15/attachment-theory-social-work-child-protection>

Shoesmith, S. (2016) *Learning from Baby P: The politics of blame, fear and denial*, London: Jessica Kingsley Publishers

Silverman, D. (2013) *Doing Qualitative Research 4th Edition*; London: Sage

SLSA (Socio Legal Studies Association) (2009) *Statement of principles of ethical research practice*  
[https://www.slsa.ac.uk/images/slsadownloads/ethicalstatement/slsa%20ethics%20statement%20\\_final\\_%5B1%5D.pdf](https://www.slsa.ac.uk/images/slsadownloads/ethicalstatement/slsa%20ethics%20statement%20_final_%5B1%5D.pdf)

Smeeton, J. and Boxall, K. (2011) Birth parents' perceptions of professional practice in child care and adoption proceedings: implications for practice, in *Child and Family Social Work* 16: 444–453

Smith, C. (2001) Trust and Confidence: Possibilities for Social Work in 'High Modernity' in *British Journal of Social Work* 31: 287-305

Smith, C. and Ellger, T. (2014) Critical Realism and Interviewing Subjects, in Edwards, P. K., O'Mahoney, J. and Vincent, S. (Editors) *Studying Organizations Using Critical Realism: A Practical Guide*, Oxford: Oxford University Press

SWE (Social Work England) (2019) *Professional Standards*  
[https://www.socialworkengland.org.uk/media/1640/1227\\_socialworkengland\\_standards\\_prof\\_standards\\_final-aw.pdf](https://www.socialworkengland.org.uk/media/1640/1227_socialworkengland_standards_prof_standards_final-aw.pdf)

SWRB (Social Work Reform Board) (2012) *Social Work Reform Board: Building a safe and confident future: Maintaining momentum (Progress Report)*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/175947/SWRB\\_progress\\_report\\_-\\_June\\_2012.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/175947/SWRB_progress_report_-_June_2012.pdf)

- Summers, A., Gatowski, S. and Dobbin, S. (2012) Terminating parental rights: the relation of judicial experience and expectancy-related factors to risk perceptions in child protection cases, in *Psychology, Crime & Law*, 18(1): 95-112
- Taylor, C. (2009) Safeguarding Children: Historical Context and Current Landscape, in Broadhurst, K., Grover, C. and Jamieson, J. (Editors), *Critical Perspectives on Safeguarding Children*; Chichester: Wiley-Blackwell
- Taylor, C. and White, S. (2000) *Practising Reflexivity in Health and Welfare: Making Knowledge*, Buckingham: Open University Press
- Taylor, C. and White, S. (2006) 'Knowledge and Reasoning in Social Work: Educating for Humane Judgement', in *British Journal of Social Work* 36: 937 – 954
- Teubner, G. (1989) How the Law Thinks: Towards a Constructivist Epistemology of Law, in *Law and Society Review* 23: 728–57
- Thomas, C. (2018) *The Care Crisis Review: Factors contributing to national increases in numbers of looked after children and applications for care orders*. London: Family Rights Group [https://frg.org.uk/images/Care\\_Crisis/Care-Crisis-Review-Factors-report-FINAL.pdf](https://frg.org.uk/images/Care_Crisis/Care-Crisis-Review-Factors-report-FINAL.pdf)
- Torstendahl, R. and Burrage, M. (1990) *The Formation of Professions: Knowledge, State and Strategy*, London: Sage
- Tunstill, J. (1999) Social services provision for children and young people: answer or problem? in Tunstill, J. (Editor) *Children and the State: Whose problem?* London: Cassell
- Turney, D., Platt, D., Selwyn, J. and Farmer, E. (2012) *Improving Child and family assessments: Turning Research into Practice*; London: Jessica Kingsley Publishers
- Turney, D. (2012) A relationship-based approach to engaging involuntary clients: the contribution of recognition theory, in *Child and Family Social Work* 17: 149-159
- Ward, T. (2006) English Law's Epistemology of Expert Testimony, in *Journal of Law and Society* 33 (4): 572-595

- Ward, T. (2012) Expert Evidence, Judicial Reasoning, and the family Courts Information Pilot, in *Journal of Law and Society* 39 (4) 515 - 540
- Warner, J. (2014) “Heads must roll”? Emotional politics, the press, and the death of Baby P., in *British Journal of Social Work*, 44 (6), 1637–1653.
- Warner, J. (2015). *The emotional politics of social work and child protection*. Bristol: Policy Press.
- Warner, J. (2018) Emotional Interest Representation and the Politics of Risk in Child Protection, in *Politics and Governance* 6 (4) 73–82
- Watkins, J., Drury, L. and Preddy, D. (1992) *From Evolution to Revolution: The Pressures on Professional Life in the 1990s*, Bristol: University of Bristol
- Webb, S. A. (2015) *Professional identity and social work*, Key note presentation to 5<sup>th</sup> International Conference on Sociology and Social Work: New Directions in Critical Sociology and Social Work: identity, Narratives and Praxis, available at <http://www.chester.ac.uk/sites/files/chester/WEBB.pdf>
- Weiss, D. J. and Shanteau, J. (2003) Empirical Assessment of Expertise, in *Human Factors: The Journal of the Human Factors and Ergonomics Society* 45 (1): 104-116
- Weiss-Gal, I. and Welbourne, P. (2008) The professionalisation of social work: a cross-national exploration, in *International Journal of Social Welfare* 17: 281– 290
- Welbourne, P. (2016) Adversarial courts, therapeutic justice and protecting children in the family justice system, in *Child and Family Law Quarterly* 28 (3): 205-221
- Welbourne, P., MacDonald, P. and Bates, P. (2017) *Getting It Right In Time: parents who lack litigation capacity in care proceedings*, Plymouth University and Nuffield Foundation
- Wellman, F. (1906). *Art of Cross-Examination*. New York, Macmillan.
- White, S. (1998) Interdiscursivity and Child Welfare: The Ascent and Durability of psycho-legalism, in *Sociological Review* 46 (2): 264-92

White, S., Hall, C. and Peckover, S. (2009) 'The descriptive tyranny of the common assessment framework: Technologies of categorization and professional practice in child welfare', in *British Journal of Social Work*, 39 (7) 1197–217

White, S., Wastell, D., Broadhurst, K. and Hall, C. (2010) When policy o'erleaps itself: The 'tragic tale' of the Integrated Children's System, in *Critical Social Policy* 30 (3): 405-429

White, S. and Gibson, M. (2019) *Reassessing Attachment Theory in Child Welfare : A critical appraisal*, Bristol: Policy Press

Wikgren, M. (2005) Critical realism as a philosophy and social theory in information science? in *Journal of Documentation*, 6 (1): 11-22

Wolfinger, N. H. (2002) On writing fieldnotes: collection strategies and background expectancies, in *Qualitative Research* 2 (1): 85-95

Younghusband, E (1981) *The Newest Profession: A short history of social work*, Community Care/IPC Business Press Ltd, available at [https://www.historyofsocialwork.org/1947\\_Younghusband/1981%20Younghusband%20newest%20profession%20OCR.pdf](https://www.historyofsocialwork.org/1947_Younghusband/1981%20Younghusband%20newest%20profession%20OCR.pdf)

Zeira, A. and Schiff, M. (2014) Field Education: A Comparison of Students' and Novice Social Workers' Perspectives, in *British Journal of Social Work* 44: 1950–1966

## **STATUTES**

Local Authority Social Services Act 1970

Children Act 1989

Human Rights Act 1998

Care Standards Act 2000

Health and Social Care Act 2012

Children and Families Act 2014

Children and Social Work Act 2017

## **STATUTORY INSTRUMENTS & PRACTICE DIRECTIONS**

Family Procedure Rules 2010, SI 2010/2955

[http://www.justice.gov.uk/courts/procedure-rules/family/rules\\_pd\\_menu](http://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu)

Family Procedure (Amendment) (No 5) Rules 2012 SI 2012/3061

<http://www.legislation.gov.uk/ukSI/2012/3061/schedule/made>

PD12 A (Practice Direction 12A) PUBLIC LAW PROCEEDINGS GUIDE TO CASE

MANAGEMENT: APRIL 2010 (PLO 2010) [https://www.justice.gov.uk/courts/procedure-rules/family/pdf/practice\\_directions/Web\\_pd\\_part\\_12a.pdf](https://www.justice.gov.uk/courts/procedure-rules/family/pdf/practice_directions/Web_pd_part_12a.pdf)

PD12 A (PRACTICE DIRECTION 12A CARE, SUPERVISION AND OTHER PART 4 PROCEEDINGS: GUIDE TO CASE MANAGEMENT) (The Public Law Outline)

<https://www.justice.gov.uk/downloads/protecting-the-vulnerable/care-proceeding-reform/pd12a.pdf>

PD 12 G (PRACTICE DIRECTION 12G COMMUNICATION OF INFORMATION)

[https://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_12g](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12g)

PD 25A PRACTICE DIRECTION 25A – EXPERTS AND ASSESSORS IN FAMILY PROCEEDINGS

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/pd\\_part\\_25a](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_25a)

PD 25B PRACTICE DIRECTION 25B (THE DUTIES OF AN EXPERT, THE EXPERT'S REPORT AND ARRANGEMENTS FOR AN EXPERT TO ATTEND COURT)

[http://www.justice.gov.uk/courts/procedure-rules/family/practice\\_directions/practice-direction-25b-the-duties-of-an-expert,-the-experts-report-and-arrangements-for-an-expert-to-attend-court](http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-25b-the-duties-of-an-expert,-the-experts-report-and-arrangements-for-an-expert-to-attend-court)

## LIST OF CASES

*DPP v Kilbourne* [1973] AC 729 at 756, HL

*R v Bonython* [1984] 38 SASR 47

*Re B (Care: Expert Witnesses)* (CA) [1996] 1 FLR

*R v Cannings* [2004] 1 All ER 725

*Re B (A Child)* [2013] UKSC 33

*Re B-S (Children)* [2013] EWCA Civ 1146

*Re R (a child)* [2014] EWCA Civ 1625

*Re A (A Child)* [2015] EWFC 11

*Re N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112

*Re AV (Expert Report)* [2020] EWCA Civ 346

## APPENDIX A. In-house social work and legal evaluations of LASW evidence

LA process		
<p>LASW engagement and assessment with family members and child/ren. Variable timescales, depending on the issues.</p> <p>In some cases, there is evidence from LASW assessment that the threshold criteria (CA 1989 s31(2)) are met and care proceedings may be required for the LA to seek PR in order to safeguard the child/ren.</p>		
Process	Evaluation	Evaluator/s
During case discussion and/or supervision, LASW and SW manager reach a recommendation to request a legal planning meeting	1 <sup>st</sup> in-house LA evaluation of LASW assessment as potential evidence for care proceedings	SW manager evaluation
Start of PLO process (pre-proceedings stage)		
Legal planning meeting between LA lawyer, LASW, possibly SW manager, usually senior SW manager and possibly other LA SW staff (eg placement team)	2nd in-house LA evaluation of LASW assessment as potential evidence for care proceedings	SW manager and LA legal evaluations
<p>A decision may be made to issue care proceedings at this stage (or at a subsequent legal planning review meeting, if pre-proceedings work is agreed with the family and brought back for review).</p> <p>If the decision is to issue care proceedings, LASW prepares the initial written evidence based on assessment work to date (using the SWET), and collates any other written LA evidence to be submitted with the care proceedings application, which will be prepared by the LA lawyer.</p>		
SW manager evaluates, possibly suggest amendments, and 'signs off' the LASW's initial written evidence	3rd in-house LA evaluation of LASW assessment as potential evidence for care proceedings, now in a format designed for the legal process	SW manager evaluation
LA lawyer evaluates, possibly suggests amendments, and agrees the LASW's initial written evidence	4 <sup>th</sup> in-house LA evaluation of LASW assessment as potential evidence for care proceedings, now in a format designed for the legal process	LA legal evaluation
<p>LA lawyer files care proceedings application with the court, including initial written LASW evidence and any other written LA evidence, as per the PLO requirements.</p> <p>LA lawyer also sends copies of application documents to Cafcass, for allocation of a Children's Guardian.</p>		



## APPENDIX B. In-proceedings social work and legal evaluations of LASW evidence – Part 1

Court process		
Process	Evaluation	Evaluator/s
<b>PLO Stage 1: Issue and allocation – days 1 and 2</b>		
Court receives the application, allocates the case to the relevant level of judiciary and issues standard directions as per the PLO allocation process	1 <sup>st</sup> in-proceedings judicial (gatekeeper) evaluation of initial LASW written evidence, focussing on allocation decision.	Judicial (gatekeeper) evaluation
Cafcass allocates a Children's Guardian	1 <sup>st</sup> in-proceedings SW (CG) evaluation of initial LASW written evidence	SW (CG) evaluation
Application documents served on the parties and their legal representatives	1 <sup>st</sup> in-proceedings legal evaluations of initial LASW written evidence	Legal evaluations by representatives of the parties
<b>PLO Stage 2: Case Management Hearing – between day 12 and day 18</b>		
Advocates Meeting at least 2 days prior to Case Management Hearing (CMH) considers issues for CMH as per PLO requirements	Further in-proceedings evaluations of initial LASW written evidence and any updates	Legal evaluations by representatives of the parties. SW (CG) evaluation.
CMH - timetable for the case is set, including dates for filing of LASW final evidence prior to Issues Resolution Hearing (IRH)	1 <sup>st</sup> in-proceedings judicial (case manager) evaluation of initial LASW written evidence and any updates	Judicial evaluation (by allocated judge or magistrates)
In some cases there may be a contested Interim Care Order (ICO) hearing (CA 1989 s38), at which oral LASW evidence may be heard	1 <sup>st</sup> in-proceedings evaluation of LASW <b>oral</b> evidence	Judicial, legal and SW (CG) evaluations

## APPENDIX C. In-proceedings social work and legal evaluations of LASW evidence – Part 2

<b>PLO Stage 3: Issues Resolution Hearing – timing in accordance with case timetable</b> (The IRH should be scheduled to allow case completion within 26 weeks of issue and allocation)		
<b>Process</b>	<b>Evaluation</b>	<b>Evaluator/s</b>
Prior to the Issues Resolution Hearing (IRH), in accordance with the court timetable for the case, the LASW prepares their final written evidence, based on recommended final care plan/s for the child/ren, as agreed with the SW manager. The SW manager will review, possibly suggest amendments and 'sign off' the final written evidence, prior to it being sent to the LA lawyer	1 <sup>st</sup> in-house LA evaluation of the LASW final written evidence	SW manager evaluation
The LA lawyer will review, possibly suggest amendments and agree the LASW final written evidence	2 <sup>nd</sup> in-house LA evaluation of the LASW final written evidence	LA legal evaluation
LASW final written evidence filed with the court by the date specified at the CMH, and served on the parties, their legal representatives and the CG	1 <sup>st</sup> in-proceedings evaluations of LASW final written evidence	Legal evaluations by representatives of the parties. SW (CG) evaluation.
Advocates Meeting at least 7 days prior to IRH considers issues for IRH as per PLO requirements, including whether the IRH can be a final hearing (FH) or if a contested final hearing is required, at which oral evidence will be heard.	Further in-proceedings evaluations of LASW final written evidence, and any updates	Legal evaluations by representatives of the parties. SW (CG) evaluation.
IRH - if the IRH is a final hearing, the matter may be concluded at this point.	1 <sup>st</sup> in-proceedings judicial (case manager) evaluation of LASW final written evidence	Judicial evaluation
In some cases, at IRH, the matter will be listed for a contested final hearing (FH), requiring consideration of issues for the FH, including whether any further written evidence is required and which witnesses will be required	Further in-proceedings evaluations of LASW final written evidence, to inform the judicial case management process	Judicial, legal and SW (CG) evaluations

## APPENDIX D. In-proceedings social work and legal evaluations of LASW evidence-Part 3

<b>Contested final hearing</b> <b>(may be required to resolve disputes about threshold or care plan)</b>		
<b>Process</b>	<b>Evaluation</b>	<b>Evaluator/s</b>
LASW prepares any additions or updates to the final written evidence prepared for the IRH, based on recommended final care plan/s for the child/ren, as agreed with the SW manager. The SW manager will review, possibly suggest amendments and 'sign off' any additional final written evidence, prior to it being sent to the LA lawyer	1 <sup>st</sup> in-house evaluation of any additional LASW final written evidence	SW manager evaluation
The LA lawyer will review, possibly suggest amendments and agree any additional LASW final written evidence. LA lawyer may also consider LASW's ability to present oral evidence and engage in preparatory discussions	2 <sup>nd</sup> in-house evaluation of any additional LASW final written evidence – may also include discussions re preparation for LASW's oral evidence	LA legal evaluation
Any additional LASW final written evidence will be filed with the court by the date specified at the IRH, and served on the parties, their legal representatives and the CG	Further in-proceedings evaluations of any additional LASW final written evidence	Legal evaluations by representatives of the parties. SW (CG) evaluation.
Contested final hearing. LASW gives oral evidence, based on their written evidence (initial and final), and any updates. LASW oral evidence is given 'in chief' and there is likely to be cross-examination by legal representatives for the parties. The judge/magistrates may also ask questions of the LASW in oral evidence	in-proceedings evaluations of LASW written evidence  in-proceedings evaluations of LASW oral evidence	Judicial, legal and SW (CG) evaluations
Judgment - judicial evaluation of LASW written and oral evidence may be evident within judicial reasoning and decision in the judgment	in-proceedings evaluation of LASW written and oral evidence	Judicial evaluation (including specific commentary in written judgment)

## APPENDIX E. Summary of ethical approval and research governance applications

Application	Scope	Date granted
University of Bristol LREC 9 <sup>th</sup> December 2014	Ethical approval of whole project, subject to research governance and required permissions. Comprehensive approval process including ethical data collection, processing, storage and retention	1 <sup>st</sup> March 2015
Office of the President of the Family Division 12 <sup>th</sup> May 2015	President's approval of project to include communication of information about proceedings to a researcher (FPR 2010, Rule 12.73)	23 <sup>rd</sup> July 2015
The Judicial Office 12 <sup>th</sup> May 2015	President's approval for judicial involvement in research	23 <sup>rd</sup> July 2015
Her Majesty's Courts and Tribunals Service (HMCTS) procedures – DAP process (Data Collections and Research Request Application Form) including Privileged Access Agreement (PAA) application 12 <sup>th</sup> May 2015	Access to court hearings for observations and access to documents, including those within 'live' proceedings	PAA granted 16 <sup>th</sup> June 2015 PAA extended 23 <sup>rd</sup> June 2016
Local Authority Research Governance processes a) 12 <sup>th</sup> May 2015 (LA1) b) 13 <sup>th</sup> May 2015 [ <i>this application was refused by the LA on 19<sup>th</sup> May 2015</i> ] c) 8 <sup>th</sup> June 2015 (LA2)	Access to LA documents and LA staff	LA1 1 <sup>st</sup> July 2015 LA2 30 <sup>th</sup> June 2015
Cafcass Research Governance process 12 <sup>th</sup> May 2015	Access to Cafcass staff	18 <sup>th</sup> June 2015

## **APPENDIX F. Research Project Information for LASWs**

### *'Local authority social workers' evidence in care proceedings – social work and legal evaluations of professional expertise'*

#### Research Project Information for Local Authority Social Workers (LASW)

##### 1. Introduction:

My name is Ann Potter and I am a qualified, registered Social Worker employed as a Senior Lecturer in Social Work at Manchester Metropolitan University. I previously worked in local authority social work and as a Cafcass Children's Guardian. I am undertaking a part-time PhD at the University of Bristol Law School and you are invited to take part in my research study.

##### 1. The Research Study

You will be aware of the important changes that are ongoing in the family justice system and particularly in relation to care proceedings. My research will be a qualitative study of local authority social work practice in care proceedings, with a focus on social work and legal evaluations of professional expertise. I will be listening to the views of social work and legal professionals in interviews and focus groups, about their perceptions and understanding of social work expertise in care proceedings. I will observe court hearings, focussing on how social workers include features of professional expertise in their oral evidence, and how this is evaluated from social work and legal perspectives. I will also review some written evidence from LASWs to consider how social workers include features of professional expertise in the presentation of their written evidence during care proceedings, and how this is evaluated 'in-house' and 'in-court'.

I will be taking an in-depth look at a relatively small sample of cases (6-8 cases in total) across two local authorities. This will allow me to explore the experiences and perspectives of social work and legal professionals involved in care proceedings. The focus of the study is on the professionals involved in care proceedings and I will not be gathering any data from children and families in the course of the research.

The study aims to contribute to knowledge and understanding about how LASW evidence is situated and evaluated within care proceedings, with a focus on professional understandings and representations of expertise. It is anticipated that findings from the study will contribute to wider debates about social work practice and care proceedings, and to professional and practice development for social work and legal professionals involved in care proceedings.

##### 2. Being a research participant:

If you have been invited to take part, it is because you are the LASW in one or more of the cases that have been selected for my research sample. If you agree to take part I will attend and observe meetings and court hearings in relation to your case. I will conduct an analysis of some of your written evidence for the proceedings, to identify examples and illustrations of professional expertise. I will also interview you to gain a detailed understanding of your views and experiences. Having been a practising social worker myself, I understand the pressures on your time and I have designed the study to limit the demands on you, if you agree to be a participant. I have also ensured that robust safeguards are in place to protect your identity and to maintain anonymity for

you and the cases in the sample. The research design and these safeguards have been reviewed and approved by the University of Bristol Law School Research Ethics Committee; The President of the Family Division; The Judicial office; HMCTS Data Access Panel; Cafcass Research Governance procedure; and by your own LA Research Governance (permission) procedures.

3. Do I have to take part?

Any involvement in the study is of a purely voluntary nature. Before you are interviewed or observed, and before I analyse your written evidence, you will be asked to give consent. You may withdraw from the research process at any time, without giving a reason.

4. Confidentiality:

All information about you, other professionals and the cases you are working with will be treated as confidential. All data collected will be stored securely and destroyed 6 years after the completion of my PhD. You will be aware of the exception to maintaining confidentiality, (which applies to any registered Social Worker), which is if I were required by law to refer an individual to their employer or to the HCPC due to concerns about fitness to practise. In the unlikely event of this, I would firstly discuss the issue with you (unless to do so would cause or increase risk to a service user) and then refer the matter to the relevant employer.

5. Further information:

If you would like any further information or have any questions, please contact me:

Ann Potter

Email: [A.Potter@mmu.ac.uk](mailto:A.Potter@mmu.ac.uk);

Tel: (w) 0161 247 2101

(m) 07960608120

If you have any concerns that I am unable to resolve, please contact one of my research supervisors:

Professor Judith Masson Email: [judith.masson@bristol.ac.uk](mailto:judith.masson@bristol.ac.uk) T: +44(0)1179545304

Dr Danielle Turney Email: [danielle.turney@bristol.ac.uk](mailto:danielle.turney@bristol.ac.uk) T: +44(0)1179546726

## APPENDIX G. Informed Consent Form – LASW written evidence

*Research study title:*

*Local authority social workers' evidence in care proceedings – social work and legal evaluations of professional expertise'*

### Informed Consent Form – LASW written evidence

Please read the following points carefully. If you agree, please tick the in the column next to each statement and sign and date the bottom of the form, where indicated.

1. I have read the information sheet provided.	
2. I agree to the researcher conducting a content analysis of my written evidence	
3. The content analysis will be transcribed into an electronic document and anonymised by the researcher at the time of the content analysis. (All information I provide will be stored on an encrypted laptop.)	
4. I may withdraw your consent to the content analysis of my written evidence, and from the research process at any stage, without prejudice.	
5. If I decide to withdraw from the research process then I may choose to allow any data I have provided to date to be included in the analysis. Alternatively, I may request that all of my data is destroyed, as I prefer, as long as this is prior to [insert date]. The reason for this limitation is that beyond this date, my data will already have been included in the analysis process, and it will not be possible to withdraw it.	
6. The research will be written up in the researcher's PhD thesis, due for submission in 2018. All data will have been anonymised and personal or identifying information will not be included.	
7. The researcher may present the research at conferences and write about the research in academic journals, however no personal or identifying information will be included.	

Please sign below to show that you have read and understood this informed consent sheet.

Signed .....

Please print name .....

Researcher .....

Date.....

If you would like any further information or have any questions, please contact:

Ann Potter      Email: [A.Potter@mmu.ac.uk](mailto:A.Potter@mmu.ac.uk);    Tel: (w) 0161 247 2101 (m) 07960608120

## **APPENDIX H. Outline Interview Schedule (LA SW Manager & LA Legal Manager)**

*'Local authority social workers' evidence in care proceedings – social work and legal evaluations of professional expertise'*

### **Outline Interview Schedule**

#### **(Local Authority Social Work Manager & Local Authority Legal Manager)**

Introduction:

What are the processes for 'in house' evaluations of LASW evidence in care proceedings?

Written evidence:

1. What does good LASW written evidence look like?
2. How do you know LASW written evidence is good?
3. How would you recognise professional expertise within a LASW's written evidence?

Oral evidence:

1. What does good LASW oral evidence look like?
2. How do you know LASW oral evidence is good?
3. How would you recognise professional expertise within a LASW's oral evidence?

Prompts/additional questions, if required:

- What might be the differences between LASW evidence that is good and LASW evidence that demonstrates professional expertise?



## **APPENDIX I. Outline Focus Group Schedule (Cafcass FCAs)**

*'Local authority social workers' evidence in care proceedings – social work and legal evaluations of professional expertise'*

### **Outline Focus Group Schedule (Cafcass FCAs)**

Written evidence:

1. What does good LASW written evidence look like?
2. How do you know LASW written evidence is good?
3. How would you recognise professional expertise within a LASW's written evidence?

Oral evidence:

4. What does good LASW oral evidence look like?
5. How do you know LASW oral evidence is good?
6. How would you recognise professional expertise within a LASW's oral evidence?

Prompts/additional questions, if required:

- What might be the differences between LASW evidence that is good and LASW evidence that demonstrates professional expertise?
- What (if any) might be the differences between evaluations of LASW evidence and evaluations of Cafcass Guardians' evidence in relation to professional expertise?

## **APPENDIX J. Outline Focus Group Schedule (Judiciary)**

*'Local authority social workers' evidence in care proceedings – social work and legal evaluations of professional expertise'*

### **Outline Focus Group Schedule (Judiciary)**

Written evidence:

1. What does good LASW written evidence look like?
2. How do you know LASW written evidence is good?
3. How would you recognise professional expertise within a LASW's written evidence?

Oral evidence:

4. What does good LASW oral evidence look like?
5. How do you know LASW oral evidence is good?
6. How would you recognise professional expertise within a LASW's oral evidence?

Prompt/additional question, if required:

- What might be the differences between LASW evidence that is good and LASW evidence that demonstrates professional expertise?

## **APPENDIX K. Phase 1 Interview Schedule – LASW**

### Initial written SW evidence:

Thinking about this case - how did you approach the preparation of your initial written evidence?

What was your evaluation of your initial written evidence in this case?

What does good SW written evidence look like?

What would SW expertise look like in written evidence?

Would you say your SW written evidence in this case contained any features of professional expertise?

### SW evidence in care proceedings and evaluations of professional expertise:

What are your views and experiences about how SW evidence is evaluated in care proceedings, in relation to expertise?

Anything else you want to add?

## APPENDIX L. Summary of Phase 2 sampling planned and achieved

Phase 2 sampling: planned				
<ul style="list-style-type: none"> <li>• Observation of pre hearing, court based discussions on day 1 of FH (n=4-6)</li> <li>• Observation of final contested hearing (max 5 days) (max n=4-6 x 5 days per case)</li> <li>• Post FH interview with LASW (n=4-6)</li> <li>• Post FH interview with legal representatives for the parties (estimate n=15-25)</li> <li>• Observation of judgment hearing (n=4-6)</li> <li>• Analysis of LASW final written evidence (n=4-6)</li> <li>• Analysis of written judgement (n=4-6)</li> </ul>				
Phase 2 sampling: achieved				
Case 1	Case 2	Case 3	Case 4	Totals
Observation: pre FH discussions (n=1)	Observation: Pre FH discussions (n=1)	Observation: pre FH discussions (n=1)	Observation: pre FH discussions (n=2)	Observations: pre FH discussions (n=5)
Observation: contested FH (n= 2 of 3 days) hearing dates overlapped with Case 2)	Observation: contested FH (n= 1 of 2 days; hearing dates overlapped with Case 1)	Observation: contested FH (n= 3 of 3 days)	Observation: contested FH (judgment delivered on day 3) (n= 3 of 3 days)	Observations: contested FHs (n=9)
Interview: LASW (n=1)	Interview: LASW (n=1)	Interview: LASW (n=1)	Interview: LASW (n=1)	Interviews: LASWs (n=4)
Interviews: lawyers (n= 2)	Interviews: lawyers (n= 2)	Interviews: lawyers (n= 1)	Interviews: lawyers (n= 4)	Interviews: lawyers (n= 9)
Observation: judgment hearing (n=1)	Observation: judgment hearing (n=1)	Observation: judgment hearing (n=1)	(See above re judgment)	Observations: judgment hearings (n=4)
Analysis of LASW final written evidence (n=1)	Analysis of LASW final written evidence (n=1)	Analysis of LASW final written evidence (n=1)	Analysis of LASW final written evidence (n=1)	Analysis of LASWs' final written evidence (n=4)
Analysis of written judgement (n=1)	Analysis of field notes of oral judgment (n=1)	Analysis of written judgement (n=1)	Analysis of written judgement (n=1)	Analysis of written/oral judgements (n=4)

## APPENDIX M. Research Project Information for Family Members

*'Local authority social workers' evidence in care proceedings – social work and legal evaluations of professional expertise'*

### Research Project Information for Family Members



#### 1. Introduction:

My name is Ann Potter and I am conducting a research study looking at social work practice in care proceedings. I work at Manchester Metropolitan University and I am doing my research with the University of Bristol.

I have been given permission to study care cases. This includes observing some meetings and court hearings and interviewing social work and legal professionals. I hope my research will help to improve practice in care proceedings. I am not studying the detail of cases or the families involved.

My research study has been checked over and permissions have been given by a wide range of people, including the University of Bristol Ethics Committee and Her Majesty's Court Service, to make sure that I do things right and I keep anything I read or hear confidential.

#### 2. What does this mean for you?

If I am sitting in on a meeting or court hearing that relates to your family, I will be listening and writing notes. However, these notes will not contain details about you or your family's case. The notes I make will be about how the social worker presents their evidence.

I will not write down any names, addresses or other identifying information about your family.

#### 3. Do you have to agree?

You don't have to agree to me observing a meeting or court hearing that you are involved in. If you don't agree at the start (or at any point in the process), then I will not observe the meeting or court hearing.

If you do agree then I will make sure that I will not write or say anything which identifies you or your family

#### 4. Any questions?

If you have any questions or concerns about this please feel free to email me at [A.Potter@mmu.ac.uk](mailto:A.Potter@mmu.ac.uk)

## **APPENDIX N. Post Final Hearing Interview Schedule – SW**

### Written SW evidence:

Thinking about this case - how did you approach the preparation of your written evidence?

What was your evaluation of your written evidence in this case?

What does good SW written evidence look like?

What would SW expertise look like in written evidence?

Would you say your SW written evidence in this case contained any features of professional expertise?

### Oral SW evidence:

Thinking about this case - how did you approach/prepare for your oral evidence?

What was your evaluation of your oral evidence in this case?

What does good SW oral evidence look like?

What would SW expertise look like in oral evidence?

Would you say the your oral evidence in this case contained any features of professional expertise?

### SW evidence in care proceedings and evaluations of professional expertise:

Anything else you want to add?

## **APPENDIX O. Post Final Hearing Interview Schedule – Advocates**

### Written SW evidence:

Thinking about this case - how did you approach your evaluation of SW written evidence?

What was your evaluation of the SW written evidence in this case?

What does good SW written evidence look like?

What would SW expertise look like in written evidence?

Would you say the SW written evidence in this case contained any features of professional expertise?

### Oral SW evidence:

Thinking about this case - how did you approach/prepare for the SW oral evidence?

What was your evaluation of the SW oral evidence in this case?

What does good SW oral evidence look like?

What would SW expertise look like in oral evidence?

Would you say the SW oral evidence in this case contained any features of professional expertise?

### SW evidence in care proceedings and evaluations of professional expertise:

Anything else you want to add?

## APPENDIX P. Summary of the LASWs' professional experience

LASW	Number of years' post-qualifying experience	Experienced in contested care proceedings?	Court skills training completed?	Post qualifying social work qualification completed?
LASW1	2	No	Yes	No
LASW2	8	Yes	Yes	Yes (PQ Child Care Award)
LASW3	14	No	Yes	No
LASW4	4	Limited	No	No



## APPENDIX Q. LASW Data Case 1

Case 1	LASW interviews	Researcher observations	Researcher analysis of written evidence
Phase 1 data collection		Pre court discussion (Review hearing 1)	
		Review hearing 1	
	LASW interview - post Review hearing (1)		
		Advocates meeting (Review hearing 2)	
		Review hearing 2	
			Researcher analysis of initial written evidence
Phase 2 data collection		Pre court discussion (IRH)	
		Issues Resolution Hearing (IRH)	
		Pre court discussion (Final Hearing day 2)	
		Final Hearing day 2	
		Final Hearing day 3	
	LASW interview - post Final Hearing (1)		Researcher analysis of final written evidence

## APPENDIX R. LASW Data Case 2

Case 2	LASW interviews	Researcher observations	Researcher analysis of written evidence
Phase 1 data collection		Legal Planning Meeting (LPM)	
		Advocates meeting (CMH)	
		Pre court discussion (CMH)	
		Case Management Hearing (CMH)	
	LASW interview - post CMH		Researcher analysis of initial written evidence
Phase 2 data collection		Pre court discussion (IRH)	
		Issues Resolution Hearing (IRH)	
		Pre court discussion (Final Hearing day 1)	
		Final Hearing day 1	
		Judgement Hearing	
	LASW interview - post Judgement Hearing		Researcher analysis of final written evidence

## APPENDIX S. LASW Data Cases 3 and 4

Case 3	LASW interviews	Researcher observations	Researcher analysis of written evidence	
Phase 2 data collection		Pre court discussion (Final Hearing day 1)		
		Final Hearing day 1		
		Final Hearing day 2		
		Final Hearing day 3		
		Judgement Hearing		
	LASW interview - post Judgement Hearing		Researcher analysis of final written evidence	
Case 4		Pre court discussion (Final Hearing day 1)		
Phase 2 data collection		Final Hearing day 1		
		Pre court discussion (Final Hearing day 2)		
		Final Hearing day 2		
		Final Hearing day 3 (including Judgement)		
		LASW interview - post Final Hearing		Researcher analysis of final written evidence

## APPENDIX T. Lawyers interviewed/declined to be interviewed

<b>Case 1: 2 lawyer interviews</b>	
LA Barrister	Interviewed
Solicitor for mother (on behalf of the Official Solicitor)	Declined
Barrister for father	Declined
Barrister for the child	Interviewed
<b>Case 2: 2 lawyer interviews</b>	
LA Barrister	Interviewed
Barrister for the mother	Interviewed
Fathers in the case (x2) not represented at final hearing	N/A
Barrister for the children	Declined
<b>Case 3: 1 lawyer interview</b>	
LA Barrister	Declined
Barrister for the mother	Interviewed
Barrister for father	Declined
Barrister for the child	Declined
<b>Case 4: 4 lawyer interviews</b>	
LA Barrister	Interviewed
Barrister for the mother	Interviewed
Barrister for one of the two fathers in the case	Interviewed
Solicitor for one of the two fathers in the case	Declined
Solicitor for the children	Interviewed

## **APPENDIX U. Type of judge and types of judgment in each case**

<b>Case</b>	<b>Type of judge</b>	<b>Type of judgment</b>	<b>When and how delivered</b>
Case 1	Recorder (part time judge)	Written	Day 3 of final hearing, judgment read out in full
Case 2	Circuit Judge	Oral	Judgment hearing, 4 days after final hearing, verbal judgment delivered
Case 3	Recorder (part time judge)	Written	Judgment hearing, 19 days after final hearing, decision only read out
Case 4	Recorder (part time judge)	Written	Day 3 of final hearing, decision only read out